

No. 15408

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United States  
Court of Appeals  
For the Ninth Circuit

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GRACE & CO. (Pacific Coast),

Appellant,

vs.

PITTSBURGH TESTING LABORATORY, a  
Corporation,

Appellee.

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Transcript of Record  
In Two Volumes

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Volume II  
(Pages 271 to 546)

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Appeal from the United States District Court for the  
Western District of Washington,  
Northern Division.

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PAUL P. O'BRIEN, C



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(Testimony of William H. Schlaugh.)

Q. Do you have any recollection of discussing with Mr. Seidelhuber in that conversation what he meant by forging quality ingots, billet quality?

A. No, I do not.

Q. But you apparently did discuss it with him?

A. I did and I wrote this down and then I passed this information on to San Francisco.

Q. Correct; in a later letter to Mr. Gips?

A. Yes, sir.

Q. I believe the letter of May 1st?

A. (Witness nodded in the affirmative.)

Q. In which you quoted the Isaacson [321] price; is there anything else appearing on page 53 of Exhibit 54, your export journal, relating to any other conversations with any of the other suppliers to whom letters were sent out?

A. Yes; there is a conversation with Mr. Hargos of Isaacson.

Q. That was what date?

A. April 30th also.

Q. Mr. who?

A. Hargos, H-a-r-g-o-s (spelling).

Q. Of Isaacson Iron Works? A. Yes.

Q. What do your notes indicate on that?

A. It indicates that Isaacson quoted me a price.

Q. What were the prices that Mr. Hargos quoted you according to your notes?

A. On the 750 billet item the price of \$156.50 and on the item for fifty billets the price of \$177.50 F.O.B. cars, plant.

Q. Now, handing you what is marked Exhibit 5—and I believe this is the letter of May 1, 1952,

(Testimony of William H. Schlaugh.)

which you wrote to Mr. Gips giving him the information about the Isaacson offer and the Seidelhuber information you had received in those telephone conversations [322] —what are the prices there shown for Isaacson?

A. The prices are shown as \$157.50 and \$178.50.

Q. Wherein did that dollar difference come from?

A. You will note——

Q. Of course, your notes there indicate that the price was \$177.

A. (Continuing): You will note from these notes these prices, \$156.50 and \$177.50 are listed as F.O.B. cars, plant, meaning F.O.B. cars at Isaacson Iron Works, and the prices I quoted San Francisco was F.O.B. cars, dock, Seattle, so I added one dollar on each item for the switching charge.

Q. I see; that is fine. Now, I believe you testified that among the suppliers that you made inquiry of here was Pacific Car and Foundry. Do you recall any letters or correspondence with Pacific Car and Foundry, or telephone conversations?

A. I would have to refer to——

Q. (Interposing): I wonder if you would refresh your memory by looking at page 55 of the export [323] journal, Exhibit 54, and examine it to see if there is anything to indicate whether you discussed the offer with Pacific Car and Foundry?

A. Yes, there is.

Q. What date does it appear to be?

A. May 2nd.

(Testimony of William H. Schlaugh.)

Q. May 2nd; will you read us what your notes indicate there?

A. "Mr. Drummond, P. C. & F. 17/29 is obsolete specif. allows either carbon or alloy steel. What delivery." Down below: "Rolled or cast," and a line drawn underneath "cast" and the word "ingots."

Q. Do you recall that telephone conversation with Mr. Drumond?

A. I don't recall it any more than my notes indicate. I know I talked with him.

Q. And "P. C. and F." stands for Pacific Car and Foundry, does it?      A. Yes.

Q. Now, Mr. Schlaugh, you have examined your export journal and you have seen from that that you had a telephone conversation sometime between April 4th—I mean, April 25th and April 30th with Mr. Rogers at N. and S. in which he mentioned sandcast and a conversation with someone at [324] Seidelhuber mentioning forging quality ingots, which apparently was made April 30th, and a conversation on May 2nd with Mr. Drumond of Pacific Car and Foundry in which the subject of rolled or cast ingots was mentioned; is that correct?

A. That is correct.

Q. Your notes indicate that?      A. Yes.

Q. Now, as of that time, that telephone conversation with Mr. Drumond, did you do anything about—or make any consultation with anyone as to what these terms meant, rolled or cast ingots as used by Mr. Drumond, for example?

A. No, I did not.

Q. Sandcast as used by Mr. Rogers?

(Testimony of William H. Schlaugh.)

A. No.

Q. And quality forging ingots by Mr. Seidelhuber?

A. Well, I passed that information on to San Francisco.

Q. You passed that information on?

A. Yes.

Q. You didn't pass on the information from Pacific Car and Foundry?

A. No. They couldn't quote—neither [325] supplier could quote—a price so that I saw no reason to say anything about those suppliers.

Q. You didn't then consult an expert as to what was meant by those terms? A. No.

Q. Now, when was the first telephone conversation you had with Mr. Murphy of the Foundry? Do your notes indicate?

A. Well, there was a conversation between the 25th and 2nd, on page 55 of the export journal. Possibly that was the first conversation. I don't know.

Q. Page 55? A. Yes.

Q. And what do your notes show on that?

A. It shows Jim Murphy, Seattle Foundry, 5½ and 6 cents a pound. The next line is \$120; next line is sandcast.

Q. And when did that conversation take place?

A. Sometime between April 25th and May 2nd.

Q. May I see that just a moment, where you are referring to? A. Right here. [326]

Q. Do you have any independent recollection of

(Testimony of William H. Schlaugh.)

when that conversation was other than between these dates?      A. No, I do not.

Q. Now, I understand that—I believe you have testified that—you had to send Mr. Murphy another copy of the specifications. Handing you Exhibit 4, is that your letter to Mr. Murphy, dated May 1st?

A. Yes, it is.

Q. And would that—does that help you place the time you may have had this telephone conversation with Mr. Murphy?

A. Possibly this conversation was upon receipt of Mr. Murphy's receiving this second specification.

Q. How did you know to send Mr. Murphy the second specification? Did he write you a letter?

A. He telephoned me.

Q. Could that have been the telephone conversation right here?

A. I can't place that. It could have been. I have no way of knowing if it was.

Q. But Mr. Murphy did mention the phrase sandcast, didn't he? [327]      A. Yes.

Q. And in what connection did he mention it?

A. I don't recall.

Q. Did he mention any connection with the billets that he was supplying?

A. I don't recall.

Q. Now, I believe you have testified that you received a letter from Mr. Murphy. Handing you what has been admitted as Exhibit 7, the letter is dated what date, Mr. Schlaugh?

A. May 2nd.

(Testimony of William H. Schlaugh.)

Q. May 2nd? A. Yes.

Q. 1952? A. Yes.

Q. And that is written by Mr. Murphy to you or to your attention? A. Yes.

Q. Now, may I have that just a moment?

A. (Witness hands document to Counsel.)

Q. Was this the first written offer you received from Seattle Foundry? A. I believe it is.

Q. Now, I see some pencil marks there on the letter. [328] A. Yes.

Q. Were those made by you? A. Yes.

Q. May I have it a moment?

A. (Witness hands document to Counsel.)

Q. All of these pencil marks on here were made by you; is that correct? A. Yes.

Q. Where did the the information come from which you put down on those notes?

A. Possibly—I mean undoubtedly from Seattle Foundry, Jim Murphy.

Q. From a telephone conversation with him?

A. Yes.

Q. Now, Mr. Schlaugh, I note that some of these notes say approximate weight 515 pounds, and then you have another here on Exhibit 7, after it is written or typed, \$120 per net ton or \$123 F.O.B. cars plant. A. Yes.

Q. I think that is \$123.00? A. Yes.

Q. And down after item two you have \$175 per net ton or \$133 F.O.B. plant. A. Yes. [329]

Q. You have testified earlier as to that; now, Mr Schlaugh, down at the bottom of the letter is some thing about Nieder and Marcus; is that right?

(Testimony of William H. Schlaugh.)

A. Yes.

Q. Who are Nieder and Marcus?

A. It is a firm located across the street from Seattle Foundry Company.

Q. What kind of a firm are they?

A. I believe they handle scrap. I don't know.

Q. And this note appears to be N. P.

A. Yes.

Q. What does that stand for?

A. Northern Pacific.

Q. Does that mean they have a spur track into Murphy's plant?

A. No. It meant that Seattle Foundry did not have a spur so that it was necessary to truck these billets across the street to Nieder and Marcus who did have a spur on the Northern Pacific line.

Q. Now, your letter from Mr. Murphy, will you read for me the letterhead on the letter which is Exhibit 7?

A. Seattle Foundry Company, Inc.

Q. Yes; please read it all. [330]

A. "Successors to Tennent Steel Casting Co. Inc."

"Manufacturers quality 'Electric' Steel Castings. Elliott 3274."

Keep going?

Q. I think that is enough. I think that is—well, it then says:

"Seattle 4, Washington"?

A. Yes.

Q. Is that indication to you that—or was it any

(Testimony of William H. Schlaugh.)

indication to you that that was the business of this company, making steel castings?

A. I didn't see the lower print. I don't think anyone usually reads the lower print, just the common letterhead.

Q. The word "casting" appears in there twice, doesn't it? A. Yes, it does.

Q. Now, in connection with this letter, when did you receive it? Does the letter indicate when it was received by you? A. On May 5th.

Q. May 5th? A. Yes.

Q. Do you have any idea when you may have talked with Mr. Murphy and gotten the information [331] you have written down in pencil on the exhibit?

A. Are there telephone conversations referring to it?

Q. I don't know if there are. I am asking you now if you have any recollection of when you did.

A. Would you repeat your question?

Q. Well, I will strike the question and start over.

Do you have any recollection of the date? You say you received this on the 5th? A. Yes.

Q. Do you have any recollection of the date on which you may have talked to Mr. Murphy on the 'phone and written those notes down?

A. I would assume it would have been May 5th upon receipt of the letter, but I don't know.

The Court: The question was: You have no recollection?

(Testimony of William H. Schlaugh.)

The Witness: No independent recollection.

Q. (By Mr. Gantt): No independent recollection; now, on the margin in this letter appears to be something that was erased. It seems to be some pencil marks that [332] were erased. Can you make out what those were, what those words say?

A. They say: "Cast steel from sand molds."

Q. They were erased but you can still read them?

A. That is right.

Q. Did you get that information from Mr. Murphy?

A. Apparently, yes.

Q. What is this? This also was erased. What does that say, or can you read it?

A. "'phone conversation."

Q. Now, did that mean you had a 'phone conversation with Mr. Murphy after receipt of this letter and that Mr. Murphy mentioned cast steel from sand molds; is that correct?

A. No, I can't assume that because this 'phone conversation is right next to this \$130.00.

Q. I see.

A. And possibly—you know—he called in later and corrected his price.

Q. Changed his price?

A. So that I feel I wrote 'phone conversation in there to show that I received that \$130.00 over the 'phone. [333]

Q. Now, why did you erase these words, "cast steel from sand molds"?

A. I can't recall actually erasing them. In fact,

(Testimony of William H. Schlaugh.)

I was very surprised at my deposition to see that they had been erased.

Q. Do you know you did it?

A. Well, I must have done it. No one else saw the letters and if I did it it was done after the claim arose.

Mr. Gantt: I would like to show this to your Honor.

(Whereupon, document was handed to the Court by Counsel.) [334]

\* \* \*

Q. (Continuing): Well now, Mr. Schlaugh, did you have occasion to write your San Francisco office and tell them about the offer you had received from—did you have occasion to write your San Francisco office and advise them of the offer you had received from Seattle Foundry? A. Yes, I did.

Q. Is the letter of May 8th from you to San Francisco, Exhibit 9, is that your answer—or, rather, is that your letter to San Francisco advising them of Seattle Foundry's—

A. (Interposing): Yes, it is.

Q. (Continuing): quotation?

May I have that a moment?

The Court: It is Exhibit? [335]

Mr. Gantt: This is Exhibit 9, your Honor. It is dated May 8th. Signed by Mr. Schlaugh.

Q. (By Mr. Gantt, continuing): That is your signature? A. Yes.

Q. Now, you say in this letter, after quoting the item numbers and the price and the F.O.B. price,

(Testimony of William H. Schlaugh.)

and something about not making item two unless proper priorities are released to obtain the nickel, and then you say item two, F.A.S. Seattle, and suppliers can ship sixty to ninety days of the order, and then you have a new paragraph:

“These billets are cast steel from sand molds and item one will weigh approximately 515 pounds each and item two 604 pounds each.”

Can you tell us now—I want you to look at Exhibit 7 and Exhibit 9 and tell us if you remember where you got the information contained in the last paragraph of the letter, Exhibit 9.

A. I obtained that information from Seattle Foundry, Mr. Jim Murphy.

Q. Is the phrase that you erased, “cast steel from sand molds,” is that similar to your phrase appearing [336] in your letter?

A. That is correct.

Q. And so you passed that on to San Francisco?

A. That is right.

Q. And that was information you had received from Mr. Murphy as to how the billets would be made?

A. Pardon me?

Q. As to how the billets would be made?

A. Well, not necessarily. “Cast steel from sand molds”—he was giving me some information about the billets.

Q. He was telling you what the billets were; these billets are cast steel from sand molds.

Mr. Morrow: Objected to as argumentative.

(Testimony of William H. Schlaugh.)

The Court: What is the letter? Are you asking the words in the letter? Is that what you are asking?

Mr. Gantt: Yes.

A. Yes, it says, "These billets are cast steel from sand molds"; that is right.

Mr. Gantt: All right. [337]

\* \* \*

Q. Mr. Schlaugh, prior to the adjournment we were discussing, or we had—you had—testified about the conversation with Mr. Murphy shortly after receiving his order, or his offer, for the billets, the first offer on the billets, his letter of May 2nd to Grace of Seattle, and about you having written down the note about sand cast or cast steel from sand molds. Do you recall that? A. Yes. [338]

\* \* \*

Q. Now, I would like to ask you, Mr. Schlaugh—you said you had probably made the erasure of the words "cast steel from sand molds" appearing on the Exhibit Number 5—7—after a telephone conversation with Mr. Murphy—this erasure that we have talked about on Exhibit 7, you said you probably erased those words on and after the claim arose; is that correct?

A. If I erased them it would have not been before then.

Q. Now, did you have the file in this matter until the claim arose?

A. We had all the papers; yes.

(Testimony of William H. Schlaugh.)

Q. Were they under your—were they in your possession and control in the office?

A. No; they were all filed generally. The purchase order was filed one place and Seattle Foundry's letters filed in the Seattle Foundry file. [339] They were all separated. It wasn't one complete file.

Q. But they were all under your general control since this was your order?

A. They were all in the office.

Q. Yes; now, had the erasure been made prior to the time of your deposition? A. Yes it had.

Q. On October 14, 1954?

A. That is when I had first seen that it was erased.

Q. Would you say then that the erasure was made between the time the claim arose and the time of your deposition, October 14, 1954? A. Yes.

Q. Yes; and did you have in your possession and under your control in your office in Seattle here the files, including Exhibit 7, during the period from the time the claim arose until the time of your deposition?

A. I believe those files—yes, they were down in the basement of our room, as I remember, because it was the year before.

Q. That is, up until the time of your deposition? [340] A. Yes.

Q. Now, Mr. Schlaugh, in the initial letter you received, Exhibit 1, from—I beg your pardon, Exhibit 2, from Mr. Gips, I believe there is a reference to nearest equivalent with regard to these specifica-

(Testimony of William H. Schlaugh.)

tions; is that not correct?      A. That is correct.

Q. In other words, the exhibits states here, "Steel billets, specification ASTM A-17/29, type a, grade two, or nearest equivalent." Did you know at the time you received Plaintiff's Exhibit 2 what the words "nearest equivalent" meant?

A. No, I did not.

Q. Did you undertake to find out?      A. No.

Q. At no time?      A. At no time.

Q. Did you know what the nearest equivalent ASTM specification was?      A. No. [341]

\* \* \*

The Court: Do you wish to add?

The Witness: Yes, I think I should for the answer. It said not the nearest equivalent of ASTM 17/29 but the nearest equivalent of grade two. At the top is listed "steel."

The Court: We understand.

Mr. Gantt: I object to that answer, your Honor. I think—I move that the answer be stricken.

The Court: The Court will not strike the answer.

Mr. Gantt: All right, your Honor, I will proceed to another point.

Q. (By Mr. Gantt): Now, did the—do you know or recall whether the proposal from Isaacson Iron Works that you received on or about May 2nd referred to the phrase "nearest equivalent"? I hand it to you at this [344] time, in describing the specification.

A. No, their proposal did not state nearest equiv-

(Testimony of William H. Schlaugh.)

alent. The proposal shows there, grade two and grade one, respectively. That is shown here.

(Whereupon, Mr. Savage returned to the court room.)

Q. How did they describe the billets in their proposal? Read that to us from the exhibit. What exhibit number is that? A. 6.

Q. Exhibit 6.

A. "750 steel billets, 9½" by 4" by 48½", to meet ASTM spec. A-17/29, type A, grade two"; and "50 steel billets, 6" by 3" by 120" to meet ASTM spec. A-17/29, type A, grade one."

Q. Now, do you recall offhand whether the price quotations you received from Seattle Foundry on May 5th, being Exhibit 7, uses the phrase, "to meet specification," "billets to meet specifications"?

A. You want me to read what it says?

Q. No, I want you to, to say whether, upon looking at it, it says "to meet."

A. No, not "to meet."

Q. Now, Mr. Schlaugh, prior to sending out the letter of inquiries to the various steel [345] suppliers up here, including Seattle Foundry, did you know anyone at Seattle Foundry? A. No.

Q. You had no personal knowledge of any employee down there?

A. Not an employee at that time.

The Court: When you say you didn't know "an

(Testimony of William H. Schlaugh.)

employee at that time," you mean you didn't know——

The Witness (Interposing): I didn't know an employee working there at the time I placed the inquiry with them.

The Court: You did not?

The Witness: No.

Q. (By Mr. Gantt): Did you know an employee who had worked there prior to that?

A. Yes, I did.

Q. Who was that?

A. Her name was Irma DeMaio.

Q. Irma DeMaio? A. Yes.

Q. What position did she have at the time?

A. I don't know what position. So far as I knew, it was just office help, office work. [346]

Q. How did you know Irma DeMaio?

A. Her husband worked at the Grace Seattle office.

Q. In what position; did he work there at that time? A. Yes.

Q. At the time you made the inquiry?

A. I believe he did.

Q. In what position?

A. He was port steward.

Q. I believe you testified that you received a letter, Exhibit 10, from Mr. Gips concerning checking the prices or the quotations of Isaacson and Foundry. You received that letter on what date?

A. May 12th.

(Testimony of William H. Schlaugh.)

Q. And what did you do about checking the prices?

A. I telephoned Mr. Murphy of Seattle Foundry and, as testified earlier, I requested he go over his specifications and prices to make sure he was quoting according to ASTM specifications and the prices—he went over the prices to make sure that his quotation was correct.

Q. And did he do that on the 'phone with you?

A. Yes, he did. [347]

Q. And did he at that time change or lower his price on item two?

A. Possibly that could have been the telephone conversation in which he lowered his price.

Q. Would you examine Exhibit 54, at page 58? That is your journal. The top of the page.

A. Yes.

Q. What does that indicate was written there?

A. It indicates that a telephone conversation was had with Mr. Murphy on May 12th and there is listed item two, \$130.00, for two thousand pounds.

Q. Now, does that represent a change in his price? A. Yes, it would indicate.

Q. And was that a reduction in his price?

A. I believe it was.

Q. A reduction from \$175 to \$130 a ton on item two; is that correct.

A. I would have to check to see.

Q. Handing you Exhibit 7, being his original quotation. A. Yes, it was.

(Testimony of William H. Schlaugh.)

Q. So then, upon checking with him the [348] price went down even farther; is that correct?

A. That is right.

Q. Did you check with Isaacson also?

A. No, I did not.

Q. In that connection I refer you to page 59 of your journal at the top of the page. Is there an indication there that you may have talked to Isaacson?

A. Yes.

Q. And what does that note read, and also can you tell us what that telephone conversation was?

A. Somewhere between the 12th and the 13th.

Q. Would you say then it was on the 12th?

A. It could have been, yes.

Q. And then will you read us what is upon your journal on page 59?

A. Two operations, roll to size, could reduce five or ten. O.K.

Q. Is that the note made during your conversation with Isaacson Iron Works? A. Yes.

Q. On May 12th? A. Yes.

Q. Did you discuss with Isaacson during [349] that conversation the difference in the price between your Foundry offer and Isaacson's offer?

A. No, I did not.

Q. Did you divulge to Isaacson that you were considering another supplier?

A. I don't believe that I did.

Q. Did you use the name Seattle Foundry in the conversation at all?

A. I do not recall that I did.

(Testimony of William H. Schlaugh.)

Q. What did the words "roll to size" mean to you at that time?

A. Just what it would mean to me now, just rolling down to size, I guess.

Q. You have heard of a steel rolling mill, haven't you?

A. I know just the name steel rolling mill, yes.

Q. You have never been in one?

A. No, I have not.

Q. Did you refer to anyone else to check the prices and specifications of Isaacson and Foundry?

A. I don't believe I did.

Q. Did you discuss the matter with Mr. Vanderbilt? A. I undoubtedly did. [350]

Q. Do you recall what that discussion was specifically?

A. Not specifically, no; just general discussion.

Q. After that conversation with Mr. Murphy and with Isaacson then you were satisfied that the information contained in the quotations from each of those firms was absolutely without fault then, were you? A. Yes.

Q. And at the time of the conversations on May 12th you had in your file the copy of your letter to Mr. Gips advising that the billets will be cast steel from sand molds; is that correct?

A. That is correct.

Q. Now, on direct examination you stated that after you received the teletypes of May 9th regarding the possibility of changing the supplier and requesting that you get an extension of time on the

(Testimony of William H. Schlaugh.)

offers you stated that you were requested to extend "my offers" to Isaacson or Foundry—"my orders" to Isaacson and Foundry. Did you mean that "my" because you had dealt with them exclusively, with Isaacson and Foundry?

A. I don't remember where I used the [351] term "my." Could you refresh me on that?

Q. You used it in connection with stating you were asked by Mr. Gips to obtain an extension of time of the validity of the offers and your answer was, according to my notes, that you were requested to extend "my offers" to Isaacson and Foundry.

A. I didn't mean mine personally. I meant the Grace Seattle office.

Q. But you had been the only one in the Grace Seattle office who had been dealing with Isaacson and Foundry; is that correct? A. Yes.

Q. Concerning those billets?

Now, would you turn to page 43 of your lumber journal for just a moment? I believe you made reference to this this morning in connection with a telephone conversation to Mr. Gips. Now, at the top of page 43 the journal indicates "steel billets, confirm acceptance"? A. Yes.

Q. How do you fix from the journal what date that telephone conversation was on?

A. Well, the last date shown was May 14th and the next May 19th; somewhere in between. I [352] would like to state this: When I received the telephone call I undoubtedly—from Mr. Gips I undoubtedly picked up this book, not knowing it was

(Testimony of William H. Schlaugh.)

the lumber book, and I started to write, "Mr. Gips, steel billets, confirm acceptance." Then in talking to him I realized I had the lumber journal and probably put it down and picked this up and you notice I wrote the exact same information, "steel billets, Mr. Gips, confirm acceptance," and then I went on with the conversation. So that it is my recollection that this telephone call is the same telephone call as this. Do you see what I mean?

Q. Yes, I understand. I am glad you explained that. Then is there any reference to what date that was specifically?

A. Between May 14th and May 16th.

Q. Good. Thank you. It is your recollection that you telephoned Mr. Murphy then to confirm the acceptance of his offer—the Foundry offer?

A. Yes.

Q. And did you fix a date for that telephone conversation?

A. It can be fixed with the documents here, I believe. I feel that I called Mr. Murphy immediately after receiving this telephone call from [353] Mr. Gips.

Q. Handing you Exhibit 18, being a teletype of—is that the record? Does that tend to fix when you called Mr. Murphy?

A. Yes, it does. It fixes the date as of May 15th.

Q. May 15th? A. Yes.

Q. And what is the date or time particularly of that teletype? A. 3:08 p.m., on the 18th.

Q. So that you feel you called Mr. Murphy prior

(Testimony of William H. Schlaugh.)

to sending that teletype?      A. I definitely did.

Q. Do you recall anything else in that telephone conversation on May 18th with Mr. Murphy?

A. In my telephone notes it would indicate I talked about other subjects there.

Q. On the 15th.

A. Yes, when San Francisco telephoned me advising that we had the order and I was to place it with Seattle Foundry they also told me that Pittsburgh Testing Laboratory would make the inspection and then when I called Mr. Murphy I gave him that information. Now, I don't know when Pittsburgh [354] Testing Laboratory advised Mr. Murphy that they did not have any spec. but from this book it would appear that I placed the order with Mr. Murphy and then either he contacted Pittsburgh Seattle or then they contacted him and he called me back and mentioned—I have written down here—"Pittsburgh Testing have no spec." It was probably on that same day. I have no way of fixing the day.

Q. You are reading from page 43 of the lumber journal again?      A. Yes.

Q. And you say it reads there:

"Jim Murphy. Testing for our account. Pittsburgh Testing have no spec. ASTM 17/29 old testing."

And then it says:

"He'll send us one."

Is that correct?

A. That is what it says, "He'll send us one." I

(Testimony of William H. Schlaugh.)

can't recall whether that meant that he will send us one, meaning Grace. It would be my interpretation at this late date that Pittsburgh, San Francisco, would send Pittsburgh, Seattle. I really don't know.

Q. All right; now, did you have any correspondence or do you recall any correspondence [355] with Seidelhuber after sending out your order? You have testified that your notes show you had a telephone conversation with someone from Seidelhuber?

A. Yes.

Q. And that you passed that information on to Mr. Gips in your letter of May 1st. Do you recall receiving a letter from Seidelhuber?

A. Yes, I do.

Mr. Gantt: This has not been offered in evidence. Do you object to it?

Mr. Morrow: No, no objection.

Q. (By Mr. Gantt): Handing you what is marked Defendant's Exhibit A-4—Defendant's Exhibits A-4—I will ask you if you recall or can identify receiving that letter? A. Yes, I can.

Q. It came to your attention, does it show, in the box up there? A. Yes.

Mr. Gantt: I would like to offer this in evidence, your Honor.

The Court: I understood there was no objection?

Mr. Morrow: No objection. [356]

The Court: Exhibit A-4 may be admitted.

(Defendant's Exhibit A-4 admitted.)

Q. (By Mr. Gantt): Is this the letter then that

(Testimony of William H. Schlaugh.)

you received from Seidelhuber? A. Yes.

Q. Stating that—I wonder if you would read this to us, please; Defendant's Exhibit A-4?

A. "To W. R. Grace and Company, attention Mr. W. H. Schlaugh.

"We received a telephone call from you on or about April 30th regarding the possibility of our supplying a special grade of steel to be used in the manufacture of railroad locomotive parts by a Latin American company. You had requested billets which we are not able to supply and we suggested you contact your client to see if a forging quality ingot would be equally satisfactory. Our standard size ingots were given you over the telephone as follows: 12" square up to 1800 pounds; 20" up to 6600 pounds, and 25" square up to 12,000 pounds.

"We would suggest you or your client [357] provide us with F.A.E. grade of steel which they desire and then we will be able to furnish you with a quotation.

"When we last talked to you we were advised that your company would request this additional information immediately. As we have not heard from you we are writing to inquire if any additional specifications have been received which will aid us in quoting you a competitive price.

"Cordially yours, Seidelhuber Steel Rolling Mill."

Q. In connection with this letter you have the phrase:

"\* \* \* special grade of steel to be used in the

(Testimony of William H. Schlaugh.)

manufacture of railroad locomotive parts by a Latin American Company.”?

A. Yes.

Q. Now, did that concern you at all this request about manufacture of railroad locomotive parts?

A. Well, the original inquiry stated that.

Q. Were you impressed by the phrase here: “\* \* \* special grade of steel \* \* \*” in Seidelhuber’s letter? A. No.

Q. Did you answer Seidelhuber’s letter? [358]

A. Yes, I did.

Mr. Gantt: Any objection?

Mr. Morrow: No.

Q. (By Mr. Gantt): Handing you what has been marked Defendant’s Exhibit A-5, can you identify that as being a copy of——

A. (Interposing): Yes.

Q. (Continuing): a letter you wrote to Seidelhuber? A. Yes.

Q. On May 19th?

A. (Witness nodded in the affirmative.)

Mr. Gantt: I offer this in evidence.

Mr. Morrow: No objection.

The Court: A-5 may be admitted.

(Defendant’s Exhibit A-5 admitted.)

Q. (By Mr. Gantt): Do you ever recall discussing with Mr. Murphy, prior to the claim of the New Zealand Government or you being notified of it, the question of the use of these steel billets in locomotive parts?

(Testimony of William H. Schlaugh.)

A. Only—there was no reference to it—just the only reference was in my original letter, as I [359] recall, stating that they were to be used for locomotive parts.

Q. You don't recall—

A. (Interposing): Other than that, I don't recall any conversation with him on that subject.

Q. Do you recall any discussion with Mr. Murphy prior to the time this claim arose as to what the end use of the billets would be by the New Zealand Government?      A. No.

Q. Do you recall any discussion with anybody at Pittsburgh Testing Laboratory in Seattle concerning the end use of the product by the New Zealand Government?      A. No.

Q. Now, did you ever go out to see the Foundry?

A. Yes, I did.

Q. And when was that visit?

A. It was after Seattle Foundry had commenced manufacturing billets.

Q. Do you have any record of when you went?

A. No, I do not. I know there were fifty to one hundred billets manufactured and already stored across the street at Neider and Marcus upon my first [360] visit there.

Q. There was no reference to your visit in your journal, was there?

A. No just telephone conversations.

Q. And did you see Mr. Murphy there when you arrived, when you went to the Foundry?

A. Yes.

(Testimony of William H. Schlaugh.)

Q. Did you observe the casting operations at the Foundry?

A. He took me through the plant and we just walked through the plant.

Q. Were they pouring any billets then?

A. I believe they were.

Q. Did you watch them? A. Yes.

Q. Now, I believe you testified that you received a letter of May 16th from Mr. Murphy, being Exhibit 23, is that correct? A. Yes.

Q. And you received it on what date?

A. May 19th.

Q. May 19th; and on Exhibit 23 there is a last paragraph. I note the last paragraph says:

“No other requirements were listed, physical or chemical. Will you kindly verify the above.” [361]

There is a cross mark out here, apparently made in ink. Did you make that?

A. I don't recall making it, no.

Q. Now, did you take it upon yourself to show the letter of May 16th to any one at Pittsburgh Testing in Seattle? A. No.

Q. You just sent a copy of it on, as you testified, to Mr. Gips? A. Yes.

Q. You didn't do anything upon receipt of this letter about checking the specifications yourself here locally? A. No, I did not.

Q. Going to the library? A. No.

Q. Now you testified that you sent Plaintiff's Exhibit 24, being a letter of May 19th, down to San Francisco, sending them a copy of the letter Mr.

(Testimony of William H. Schlaugh.)

Murphy wrote of May 16th together with a signed copy of the purchase order. With regard to the fourth paragraph in this letter, quoting therefrom:

“We assume you sold these billets basis the prices quoted by Isaacson Iron Works per our [362] number 3208 or close to them. We later gave you much lower prices from Seattle Foundry, therefore, you should have a handsome margin in this business. Under the circumstances we believe we should participate in a substantial share of the profit instead of the usual one per cent buying commission, and would like to have your confirmation.”

Now, at the time you wrote that letter it was—which was dated May 19th, had you figured out, Mr. Schlaugh, what that additional profit would be?

A. Well, I just roughly compared Isaacson's quotation against Seattle Foundry's quotation.

Q. Had you endeavored to compute the price out to see within a matter of one thousand dollars what the difference in profit would be to Grace?

A. I probably knew within one thousand dollars, yes.

Q. Did you know it was as high as eight thousand dollars difference?

A. No, I didn't know that it was.

Q. In fact, did your Seattle office get to participate in a substantial share of the profits instead of the usual one per cent buying commission?

A. It is not settled yet. [363]

Q. Do you originate any orders up here; purchase materials?

(Testimony of William H. Schlaugh.)

Mr. Morrow: When?

Mr. Gantt: I am asking him.

A. No, we are strictly agents.

Q. (By Mr. Gantt): For San Francisco?

A. Acting as agents for San Francisco in the Northwest area.

Q. I see, and you don't compute the profit margin then, the margin of profit?

A. No, we do not.

Q. But you were aware of it here?

A. I was only aware of the difference in price between Isaacson's quotation and the Seattle Foundry.

Q. Now, Exhibit 36 is the invoices; was payment of these Pittsburgh invoices made in Seattle?

A. No.

Q. Made by the Grace office in San Francisco?

A. Yes.

Q. With regard to the invoice to the Foundry, was payment made in the Seattle office?

A. Yes.

Q. And I see a little box on the left-hand [364] corner of the invoices which are Exhibit 36 which seems to have a date and something else.

A. Yes.

Q. Will you explain what that meant?

A. Yes, that is an audit stamp, an office audit stamp, in which you fill out the date and fill out the account to which this payment would be charged and the amount of money is put down in the right-hand

(Testimony of William H. Schlaugh.)

side and the person that checks the invoice puts his initials here and that is my initial.

Q. I see.

A. And the manager of the office, Mr. Vanderbilt, initials here approving it for payment.

Q. Thank you; now, do you—I believe you stated that Exhibit 20, which is a letter dated May 16th addressed to Seattle Foundry—you believe you dictated that although Mr. Vanderbilt signed it and his initials appear in the lower left hand corner?

A. Yes.

Q. Do you see the reference in there to plant certificates?

“We understand you will furnish a plant certificate that the billets conform to specifications.”

Do you see that portion of Exhibit 20?

A. Yes. [365]

Q. Now, did the Foundry furnish any plant certificates to you or to Grace and Company?

A. I don't believe they did. I don't recall.

Q. You never saw any?

A. Not that I recall.

Q. Was any question ever raised as to why they didn't?

A. No, I don't think there was.

Q. You don't recall ever discussing with Mr. Murphy, “Where are your plant certificates?”

A. No.

Q. Why wasn't that done?

A. In my opinion we did not press this issue with Seattle Foundry inasmuch as we had know

(Testimony of William H. Schlaugh.)

That Pittsburgh Testing Laboratories were furnishing their certificates.

Q. But the letter of May 16th from you to the Foundry requires a certificate.

A. "As I understand, you will furnish a certificate."

Q. And what does the rest of the sentence say?

A. "That the billets conform to specifications."

Q. And the next?

A. "Pittsburgh Testing Laboratory will also inspect these billets the cost of which will be for our account." [366]

Q. So that according to this letter both plant certificates and the inspection of Pittsburgh were requested, is that correct?

A. I believe they were.

Q. Now, handing you what has been marked and what has been admitted in evidence as Plaintiff's Exhibit 35, which purports to be reports of Pittsburgh Testing Laboratory, did you receive any of those reports in the Seattle office?

A. I don't recall that we did.

Q. Have you ever seen them prior to today?

A. Well, I have just seen them on a desk. I haven't read them.

Q. They didn't come to your attention then?

A. No.

Q. Now, did you obtain credit reports on the Foundry? A. Yes.

Q. Where did you—did you do that yourself or

(Testimony of William H. Schlaugh.)

who did look after obtaining a credit report on the Foundry?

A. I believe I asked—either Mr. Vanderbilt or myself asked our accountant at the office to go down to the bank and request Dun and Bradstreet reports. [367]

Q. Did you see the Dun and Bradstreet reports that came as a result of that request? A. Yes.

Mr. Morrow: I think it should be established as to the date. I have no objection. Yes, I object to it. It is immaterial and irrelevant. For what purpose is it offered?

Mr. Gantt: I want to offer, your Honor, the Dun and Bradstreet report which is actually attached to one of Mr. Vanderbilt's letters to Grace in San Francisco. I realize it is a little out of order and if Mr. Vanderbilt is to testify I can do it through him.

The Court: You withdraw your offer?

Mr. Morrow: Well, I have no objection. I don't think it is material or relevant. I think it ought to be established as to the time.

The Court: Are you offering it?

Mr. Gantt: I can't offer it if he is going to object.

The Court: Well——

Mr. Morrow (Interposing): I will withdraw my objection. I may not call Mr. Vanderbilt.

Mr. Gantt: Well, I want to hand—offer this your Honor, which is Exhibit A-13. [368]

The Court: May I see it?

(Testimony of William H. Schlaugh.)

(Whereupon, proposed exhibit was handed to the Court by Mr. Gantt.)

As I understand, there is no objection?

Mr. Morrow: No objection.

The Court: A-13 may be admitted.

(Defendant's Exhibit A-13 admitted.)

Q. (By Mr. Gantt): Exhibit A-13, Mr. Schlaugh, consists of a letter dated June 30, 1952, from Mr. Vanderbilt to Grace in San Francisco?

A. Yes.

Q. And it refers to a Dun and Bradstreet report. I will hand you the exhibit and ask you if you have ever seen the Dun and Bradstreet report which is attached there or a copy of it?

A. Yes I have.

Q. Do you recall seeing the Dun and Bradstreet report at the time of this transaction?

A. Yes.

Q. Now, does this——

Mr. Morrow (Interposing): Now, just a minute. You say “\* \* \* at the time of this transaction.” I would like to have the time established. [369]

Mr. Gantt: That is fair enough. I will do that, Counsel.

Q. (By Mr. Gantt, continuing): This letter is dated June 30, 1952, so that apparently you must have received the Dun and Bradstreet report prior to sending it on June 30th—Grace did?

A. Yes, on or about June 30th.

(Testimony of William H. Schlaugh.)

Q. On or about June 30th; then you had seen this Dun and Bradstreet report attached?

Q. Your answer is "yes"?

A. My answer is "yes."

Q. And did you look it over and study it?

A. Yes.

Q. You did read it?                      A. Yes.

Q. Do you recall reading this portion on page two of the report entitled "Method of operation" down at the bottom, almost at the bottom, of the page, this portion right here?

A. Well, I undoubtedly read all through.

Q. Will you read what is written there in the Dun and Bradstreet report on page two under heading "Method of operation"? [370]

A. "Producer manufactures steel castings to order and does steel foundry work. U. S. Standard Industrial Classification 3323."

Mr. Gantt: Fine. Thank you. [371]

\* \* \*

Mr. Gantt: I will offer Defendant's Exhibit A-15, your Honor.

The Court: A-15 may be admitted.

(Defendant's Exhibit A-15 admitted.)

Q. (By Mr. Gantt, continuing): I want to ask you: Handing you what has been marked Defendant's Exhibit, and admitted as Defendant's Exhibit A-15, I will ask you if you recall having seen that letter?                      A. Yes; I did see it.

(Testimony of William H. Schlaugh.)

Q. How do you—what recalls to you that you saw it? A. My initials are shown up——

Q. (Interposing): In the box?

A. (Continuing): ——in the box.

Mr. Gantt: I would like permission to read this into the record, your Honor.

The Court: You may proceed. [372]

\* \* \*

Q. (By Mr. Gantt): Now, I want to ask you, Mr. Schlaugh, you stated you read this letter and your stamp is shown as of July 15th. I want to ask you if you did keep in constant contact with Seattle Foundry to see that the contract had been completed in accordance with the original delivery date and specifications?

A. We kept in constant contact with Seattle Foundry regarding delivery dates making sure that they delivered the billets on time as per the contract and inasmuch as Pittsburgh Testing Laboratory had been hired to make the inspection we felt that it was in good hands and that their inspection would prove that the order was manufactured as per contract.

Q. I want to ask you whether you ever discussed the contents of this letter with anyone at Pittsburgh Laboratory in Seattle?

A. No; I don't recall that I did. [374]

\* \* \*

Mr. Gantt: I am offering Defendant's Exhibit

(Testimony of William H. Schlaugh.)

A-19, your Honor, I understand Counsel has no objection.

The Court: No objection?

Mr. Morrow: No objection.

The Court: A-19 may be admitted.

(Defendant's Exhibit A-19 admitted.)

Q. (By Mr. Gantt): Handing you, Mr. Schlaugh, Defendant's Exhibit A-19, apparently a signed copy of the letter from Pittsburgh Testing Laboratory dated August 28, 1952, to W. R. Grace and Company, 408 White Building, Seattle, signed by M. E. Johnson, Pittsburgh Testing Laboratory and it is addressed to Mr. Vanderbilt, I wonder if you can tell me whether you recall seeing the original of that letter? Mr. Morrow says you don't have it in your files.

Mr. Morrow: We were never asked to produce the original of this letter.

Mr. Gantt: That may be, your Honor.

Mr. Morrow: If you want the original I will try and get it.

A. I think we probably have the original in the Seattle office. [375]

Q. (By Mr. Gantt): Do you recall the letter?

Mr. Morrow: We are agreeable that this stand in place of the original.

Mr. Gantt: Fine.

The Court: There is no question raised as to where the original is?

(Testimony of William H. Schlaugh.)

Mr. Gantt: Oh, no; no.

A. I must have seen this. I don't recall it. It has been so long ago; but I undoubtedly saw it.

Q. (By Mr. Gantt): Would it come to your attention in the course of this transaction?

A. Yes.

Q. I see it is addressed to Mr. Vanderbilt, but you were really looking after the transaction in Seattle, weren't you?

A. This letter wasn't brought up at all in the case, and I think I can give you an explanation why.

Q. I think you could do that on cross-examination. You can state, though, that you are familiar with the letter, and have seen it?

A. To tell you the truth, I really don't recall seeing it. I must have.

The Court: You haven't any present [376] recollection?

The Witness: No; but undoubtedly, if we produce the original, it will have my initials on it.

Q. (By Mr. Gantt): I am not trying to trap you in that regard.

A. I probably saw it.

Q. I want to read you the first sentence of Mr. Johnson's letter, August 28, 1952. That was prior to the time all the billets were shipped?

A. I think this had to do with the last shipment.

Q. This had to do with the last shipment?

A. Yes.

Q. And the first sentence is:

(Testimony of William H. Schlaugh.)

“Attention Mr. Vanderbilt:

“Gentlemen:

“In compliance with your telephone request of August 25, 1952, we hereby submit our certification of the following weights on Grade 1, three inches by six inches by ten feet zero inches, steel billets cast by the Seattle Foundry Company, Inc., of Seattle, Washington.”

You think, then, you have seen this letter, and have read it?

A. Not any more than I did before.

Mr. Gantt: All right; no further questions. [377]

Mr. Morrow: I would like to finish with Mr. Schlaugh. I think I have a few questions.

The Court: You would like to finish now?

Mr. Morrow: Yes.

The Court: All right.

### Redirect Examination

By Mr. Morrow:

Q. Mr. Schlaugh, in reference to the Dun and Bradstreet report, as I recall your testimony, you stated that came in after the job had started.

Now, what was the purpose of obtaining that report?

A. We obtained the report because Seattle Foundry had requested an advance after producing so many billets. They wanted an advance of money.

Q. Was the purpose of it for credit purposes?

(Testimony of William H. Schlaugh.)

A. Yes, definitely; just for credit.

Q. Will you state whether or not it was for purposes of determining whether Seattle Foundry was producing the product that complied with the specific order?      A. No; not at all.

Q. Now, during the period between the time of the original inquiry for billets for New Zealand—that is, some time in April, 1952, and the time when the New Zealand [378] claim came to your attention, some time in May or June, 1953, did you at any time know or have any knowledge that the material sold to you by Seattle Foundry would not comply or did not comply with the specification ASTM A-17/29?      A. No.

Q. Were you aware that there was a distinction between casting and forging?      A. No.

Q. Were you aware that the specifications required steel billets which were of a semi-finished forged material?      A. No.

Q. Were you aware of anything which would lead you to believe that Seattle Foundry was not producing a product which conformed to the request by the New Zealand government?      A. No.

Mr. Morrow: That is all.

The Court: Mr. Savage, do you have any questions at all of this witness at this time?

Mr. Savage: I think we will waive any cross-examination. [379]

(Testimony of William H. Schlaugh.)

Recross-Examination

By Mr. Gantt:

Q. But you did write the letter, Exhibit 9, to Mr. Gips, in which you stated that these billets are cast steel from sand molds? A. I wrote that letter.

Q. With reference to the quotation by the Seattle Foundry to fill this order?

A. I wrote that letter; yes.

Q. You knew then that the billets that the Foundry was going to furnish were cast steel from sand molds? A. They stated that they were.

Mr. Gantt: That is all.

A. (Continuing): And I will qualify it by saying even though they stated it, I still felt we were getting billets per specification 1729, no matter how they manufactured them.

Mr. Gantt: I will object to the last portion of the answer as not responsive, your Honor.

The Court: It may be argumentative. I don't know that it should be stricken.

There is one question I was going to ask you in regard to Exhibit No. 20.

As I recall, Mr. Schlaugh, this was, you said, prepared by you, but for the initials of—— [380] your request was prepared by you but signed by Mr. Vardebilt?

The Witness: Yes.

The Court: Was that mailed or delivered, do you know?

(Testimony of William H. Schlaugh.)

The Witness: Mailed on May 16th.

The Court: Mailed on May 16th?

The Witness: The date it was written.

The Court: Do you know when it was received back?

The Witness: The closest date I can tell on that is the covering letter. No; we didn't send them a covering letter on that. I can't tell.

The Court: May 16th; it was sent to them on the 16th?

The Witness: Yes.

The Court: You can gather that from the date on it?

The Witness: Yes. I purchased by telephone on the 15th, and this letter is on the 16th, saying. "We confirm telephone conversation yesterday." I mailed it on the 16th, but cannot establish when it was returned.

The Court: Do you have any present recollection of mailing it, or do you assume it was mailed? [381]

The Witness: I assume it was mailed. The mail girl puts the mail out. I didn't personally mail the letter.

The Court: You have no present recollection of the exhibit, other than preparing it?

The Witness: I checked it over. I am sure—if I dictated it—I feel now definitely I did—then I checked it over to see if it was typed correctly, and then I showed it to Mr. Vanderbilt for signature. That is my recollection of what happened.

The Court: But you don't know whether it was

(Testimony of William H. Schlaugh.)

mailed, or when it was received, or when Mr. Murphy signed it?

The Witness: No; I do not.

The Court: You have no present knowledge of it?

The Witness: No.

The Court: That is all.

Mr. Morrow: That is all.

The Court: Unless there are some questions on my questions.

Mr. Morrow: Well, no; there isn't, your Honor.

I would like to explain that at the request of Mr. Gantt the original was attached to the copy of [382] that, the exhibit, the yellow copy is the office copy of the Grace and Company, which was returned or signed by Mr. Murphy, and in the office of Grace Company, and the original came from the files of Seattle Foundry, which is attached.

The Court: I was just inquiring as to his present recollection of the signed copy which would be the Grace and Company copy.

The Witness: No; I don't recall.

The Court: That is all. That is all, then, Mr. Schlaugh. [383]

\* \* \*

RICHARD HARGOS

upon being called as a witness for and on behalf of the plaintiff, and upon being first duly sworn, testified as follows:

The Clerk: Will you state your name and spell your last name, please?

The Witness: Richard Hargos—H-a-r-g-o-s (spelling).

Direct Examination

By Mr. Morrow:

Q. Mr. Hargos, will you please state your full name? A. Richard Hargos.

Q. What is your address?

A. 242 Lake Street South, Kirkland.

Q. And what is your occupation?

A. Jobbing Sales Manager.

Q. For whom do you work?

A. Isaacson Iron Works.

Q. How long have you been employed by Isaacson Iron Works? A. Almost 20 years.

Q. And in what capacity did you start out with them? A. As a draftsman.

Q. How long were you a draftsman?

A. About five years. [385]

Mr. Gantt: Excuse me just one minute, your Honor. I wonder if he could speak a little louder?

The Witness: About five years.

Q. (By Mr. Morrow): And what was your next job? A. In charge of heat treating.

Q. How long were you in charge of heat treating?

(Testimony of Richard Hargos.)

A. During the war years, about four years.

Q. And what does the heat treating department involve?

A. Oh, reheating the steel after forging operations to refine the grain structure and to increase the physical properties.

Q. What was the job you had after that with Isaacson's?      A. The job in——

Q. (Interposing): After your heat treating job?

A. The same job I have now.

Q. And how long have you had this job?

A. I would say about since 1946.

Q. What is the nature of the business of the Isaacson Iron Works?

A. Well, we are a forging organization, making forgings and billets, and also steel fabricating and galvanizing.

Q. What is the——

Mr. Morrow: Strike that. [386]

Q. (By Mr. Morrow, continuing): What are your present duties in connection with their business?

A. Handling the sales or inquiries for particular forgings and billets and machining work.

Q. In your duties as manager of the—what is it—sales department?

A. It is the jobbing sales department.

Q. The jobbing sales department; what particular knowledge and experience do you have in handling of those duties? By that I mean, what par-

(Testimony of Richard Hargos.)

ticular items come up, of which you have knowledge in this jobbing sales management?

A. Well, I have to have an understanding of engineering problems as well as metallurgical problems of the conditions involved, how a product can be made, what is involved in making them, and a good idea of how much time it takes, so that I can properly cost a job, and, therefore, establish a selling price.

Q. Do you have any experience or knowledge in the actual manufacture of the steel products at Isaacson Iron Works?      A. By observation; yes.

Q. And what products do Isaacson Iron Works manufacture?

A. They manufacture ingots and billets, forgings, and [387] steel fabrication—that is, bridges and buildings and plate work such as road equipment work and hot-dip galvanizing.

Q. Does your experience and your knowledge involve the details of the manufacture of items such as ingots and billets?      A. Yes, sir.

Q. Now, in respect to your knowledge of costs going to make the finished product, does your knowledge and experience of costs include the knowledge of costs of such items as scrap steel?

A. Yes, sir.

Q. Now, I have referred to your general knowledge. Did you have this knowledge and experience in 1952?      A. Yes, sir.

Q. Now, what was your job in 1952, by the way?

A. The same as I have now. [388]

(Testimony of Richard Hargos.)

Q. Are you familiar with the American Society of Testing Materials? A. Yes; I am.

Q. Are you a member? A. Yes.

Q. What is the American Society of Testing Materials?

A. It is a Society for setting up standards for manufacturing of many numerous products besides even steel. Steel is one of the main items that they take care of. [411]

Q. And you say that you say it is for setting up standards; is that standards of specifications so that the product—the finished product—will comply with the requirements, say, of an order? A. Yes.

Q. By whom and by what industry and commerce and professional men is the American Society for Testing Materials specifications used?

A. Well, by engineers and steel mills and forging organizations, and all branches of the industry, almost.

Q. Is it used by customers and persons who desire to use products which conform to a certain standard of specifications? A. Yes.

Q. And it is used by them in purchasing and ordering a certain product conforming to specifications? A. Yes.

Q. And does the Society and its specifications and standards afford to manufacturers and purchasers alike a standard product upon which both can be assured, if it lives up to the specifications that the product will be as ordered?

A. Yes.

(Testimony of Richard Hargos.)

Q. And is the American Society for Testing Materials also used by professional engineering firms [412] engaged in the inspection business?

A. Yes.

Q. And do they likewise use the standards to determine on behalf of either the manufacturer or the purchaser whether or not the product conforms with the specifications? A. Yes.

Q. Referring you to what has been admitted in evidence as Plaintiff's Exhibit No. 41, Mr. Hargos, and which is identified as the standard specifications for carbon steel and alloy steel blooms, billets and slabs, and forgings, admitted in evidence as an identical copy, or photographic copy, of such standards, I would like to ask you whether you are familiar with these particular standards, or, more particularly, have you familiarized yourself with those particular standards? A. Yes.

Q. By the way, in the—when you receive a request to manufacture a product in accordance with a certain ASTM specification, is reference usually made to the actual specification? A. Yes.

Q. I would like to refer you to what has been marked Plaintiff's Exhibit No. 30—no; wait a minute—No. 56—which is the original volume from which your [413] exhibits, Plaintiff's Exhibit No. 41, has been photographed, and ask you if you can identify this exhibit—that is, Plaintiff's Exhibit No. 56—as a publication of the American Society for Testing Materials, issued in, or published in 1930, and containing these particular specifications?

(Testimony of Richard Hargos.)

A. Yes.

Mr. Morrow: I would also like to offer at this time Plaintiff's Exhibit No. 56. There is some duplication, but I would like to offer it and have it in evidence for the purpose of showing the very publication. It is in book form.

Mr. Gantt: We have no objection to it, your Honor.

The Court: It may be admitted.

(Plaintiff's Exhibit No. 56 admitted.)

Mr. Morrow: Very well.

Mr. Gantt: Can I have just one look at it?

Mr. Morrow: Surely.

(Whereupon, there was a brief pause.)

Q. (By Mr. Morrow): Now, Mr. Hargos——

The Court: (Interposing): That is a 1930 volume; is that right? [414]

Mr. Morrow: It is a 1930 yearbook.

The Court: I am just checking with the list of exhibits, is all.

Mr. Morrow: Plaintiff's Exhibit No. 56.

The Court: It states here, 1930.

Mr. Morrow: Yes.

Q. (By Mr. Morrow): Now, Mr. Hargos, I first would like to ask you that, had you received the order of the Grace and Company, pursuant to your proposal marked Plaintiff's Exhibit No. 6, could the Isaacson Iron Works, and would the Isaacson Iron

(Testimony of Richard Hargos.)

Works have been capable of manufacturing a product conforming strictly to these specifications?

A. Yes.

Q. And referring you to the ASTM specification A-17/29, which is Exhibit Number——

A. (Interposing): 41.

Q. (Continuing): ——41, which you have before you, would the product thus produced be a semi-finished, rolled or forged material, as provided in paragraph III of the specifications?

A. Yes.

Q. Now, with reference to that specification, paragraph III, "Billet shall be purchased as a semi-finished rolled or forged material," what does the term [415] "semi-finished rolled or forged material" mean; or terms, I should say?

A. It means that the billet will be used for—to make something further, for either forging or machining.

Q. Is there an implication in that specification that the billet itself is to be further refined?

A. Yes; I would say so.

Q. Would you or a professional engineer dealing in steel products be put on notice that the billet—assuming that it is as in your proposal—would you be put on notice that the product was to be used in making some other product?

A. I don't know what you mean by "put on notice."

Q. What I mean is, referring now to your par-

(Testimony of Richard Hargos.)

particular specification, ASTM A-17/29, and the particular size as called for in Plaintiff's Exhibit No. 6?

A. Yes?

Q. Would you—you naturally wouldn't know the end product of the billet? A. That is right?

Q. But would you or would you not anticipate that this material was to be used—not to be used but to be further refined or forged, or some other thing done to it, some other further process of manufacture, in order to give it an end use? [416]

A. Well, we would assume that.

Q. Now, why would you assume that?

A. By common practice.

Q. Now, would you assume it because of this particular paragraph III, or because of the general specification that it is for carbon steel and alloy steel blooms and slabs or forgings, or what would be the basis of your assumption?

A. By being familiar with the steel industry in general, when a person orders a billet, it is his intention that with his own equipment he will finish the work on it.

Q. I see. Going to paragraph V of the specification, wherein it is provided that "a sufficient discard shall be made from each ingot to secure freedom from injurious piping and undue segregation," what has that specification to do with it?

A. That refers to this cropping that I mentioned.

Q. I see. And what is "piping" and "undue segregation"?

A. Well, piping is when the ingot has formed a

(Testimony of Richard Hargos.)

cavity down through the center of it. It may extend one-third of the way down, or only one inch, or two, down; but in a bad ingot it might extend all the way down; and segregation is where the steel is not homogeneous. It has inclusions, such as non-metallic inclusions, or gasholes. [417]

Q. And if the ingot was not free of injurious piping and undue segregation, would that be reason for rejection under these specifications?

A. Yes.

Q. Now, in reference to paragraph VI in which it is provided that, "unless otherwise specified, the billets shall be made from ingots of at least three times the cross-sectional area of the billet"—is that a specification which would be essential to the process of manufacture of steel billets such as described in your order, Plaintiff's Exhibit No. 6?

A. Yes.

The Court: What was that question, Mr. Reporter?

(Whereupon, the following was read by the reporter:)

"Q. Now, in reference to paragraph VI in which it is provided that, 'unless otherwise specified, the billets shall be made from ingots of at least three times the cross-sectional area of the billet'—is that a specification which would be essential to the process of manufacture of steel billets such as described in your order, Plaintiff's Exhibit No. 6?

"A. Yes." [418]

(Testimony of Richard Hargos.)

Q. (By Mr. Morrow): And in your opinion if the billet in question—assume the manufacture under your order—were not manufactured from ingots of at least three times the cross-sectional area of the billets, would that be a non-compliance with the specification? A. Correct.

Q. Now, referring you to paragraph X—paragraph 10(a) of the ASTM specification, which appears in my Plaintiff's Exhibit No. 56, on page 176, and which you have before you in Exhibit—

The Court: 41?

The Witness: 41.

Q. (By Mr. Morrow, continuing): —41, I would like to ask you, Mr. Hargos, what stage of the manufacture does the paragraph in reference to chipping refer to? A. The final stage.

Q. Now, in the term "billet," as used therein, could that be interpreted to mean the stage of the ingot process? A. No.

Q. Would you say, Mr. Hargos, that paragraph 10(a) in reference to workmanship and finish pertains only to the final stage of manufacture, and has no reference at all [419] to the casting stage of the process of manufacture? A. That is right.

Q. In other words, that paragraph 10(a) has no reference to chipping of the castings?

A. That is right.

Q. And the matter of discard, however, appearing in paragraph 5 of the specifications has to do with the ingot stage of the manufacture; has it not?

A. Yes; it does, as worded here; but in our

(Testimony of Richard Hargos.)

method of manufacturing we hold it until we—until it is actually a billet because it is easier for us to do it that way.

Q. Is it—in your method of manufacture, do you do the forging first?

A. We have to have something to hang on to, and we use the hot top as the method of holding on to the piece.

Q. Is there any difference in the final effect?

A. No; none whatsoever.

Q. In reference to paragraph 11, “The billets shall be free from injurious defects and shall have a workmanlike finish,” what defects are referred to therein?

A. Well, that would be—injurious defects would be a pipe condition, segregation, so that the steel is [420] not homogeneous. Well, it just isn't good material.

Q. If the finished product contains porosity and blowholes, would they be in violation of paragraph 11, providing that the billets shall be free from injurious defects, and shall have a workmanlike finish?

A. Blowholes would be in violation; yes.

Q. Suppose there was sand adhering to the sides of the billet, would that likewise be a violation of the specification?

A. It is impossible for sand to adhere to a billet unless it has been laid in sand after it was forged.

Q. Are you familiar with the process of—

Mr. Morrow: Well, strike that.

(Testimony of Richard Hargos.)

Q. (By Mr. Morrow, continuing): Is there any—have you ever heard of the term “cast steel billet”?

A. No.

Q. You have never heard of the term?

A. It is an erroneous—it is a misnomer. There is no such thing as a “cast steel billet.”

Q. There is no such thing in the industry as a cast steel billet?

A. No.

Q. Why is that?

A. A billet is a casting of a—a cast ingot [421] that has been worked, and it doesn't become a billet until it has been worked.

Q. In other words, the term “billet,” to you at least, and to the industry, means that it is a worked material which has been forged or rolled?

A. That is correct.

Q. Now, assuming, Mr. Hargos, that in the manufacture of this product as called for in the specifications as set forth in your proposal, being Plaintiff's Exhibit No. 6, that the molten metal was poured in sand molds at a foundry; would the product manufactured comply with the specifications set forth in your proposal?

A. No.

Q. And why not?

A. Because in a foundry they don't do any mechanical work on the casting.

Q. What would be the nature of the material which you would produce by a sand-casting method?

A. Well, it would be the same nature as the ingot. It would be large grained.

(Testimony of Richard Hargos.)

Q. Would the material produced be a forging quality ingot—thus produced, I should say?

A. It could be.

Q. It could be?

A. It could be made that way; yes. [422]

Q. I see. A. But not economically.

Q. To your knowledge, are any forging quality ingots made by foundries using a method of pouring steel into cast sand molds? A. No.

Q. Is it being done? A. No.

Q. Has it been done, to your knowledge?

A. The only time it has ever been done is when the ingot required is so large that there is not an ingot mold big enough to pour it into.

Q. Yes.

A. And that is the only reason that is ever done.

Q. And in that instance do you still stick to the terminology of its being either an ingot or a casting?

A. Yes.

Q. As distinguished from a billet which is a semi-finished forged or rolled material; is that correct? A. Yes.

Q. Mr. Hargos, I want to hand you the original inquiry which you—which is in evidence—that is, a copy of it is in evidence—I can't hand you the one you received, but this which I am showing you, which is an enclosure attached to Plaintiff's Exhibit No. 4, is a [423] copy of the specifications which were put out to Isaacson and others, according to the testimony in this case, and I ask you to examine the same, particularly with reference to the term "near-

(Testimony of Richard Hargos.)

est equivalent," and when you have done so I would like to ask you a question.

A. I am familiar with this.

Q. You are familiar with that, are you?

A. Yes, sir.

Q. Now, what does the term "nearest equivalent"—first, I will ask you if you know what is meant by the term, "nearest equivalent"?

A. Nearest equivalent, basically, means something as close to what is required as possible. In this particular instance it means the chemistry.

Q. In other words, the terms as used there, "Type A, Grade 2, or nearest equivalent," refers to the chemistry composition of the material?

A. Only.

Q. Only. Now, can you state in reference to my questions and the assumed manufacture of the material at a foundry, and your statement that it is possible to manufacture an ingot by pouring the same in sand molds, can you state what additional step would be required in order to produce a forging quality ingot—

Mr. Morrow: Strike that. [424]

Q. (By Mr. Morrow, continuing): To produce a billet?

The Court: Do you understand the question?

The witness: Yes; I do.

A. The casting as cast by the foundry would have to be worked under a press or under rolls in a rolling mill.

Q. (By Mr. Morrow): In other words, to pro-

(Testimony of Richard Hargos.)

duce a product which would comply with the specifications it would be necessary for the foundry to employ a method of rolling or forging, or for somebody else to do so in order to produce a billet; is that correct?      A. Correct. [425]

\* \* \*

Q. Do foundries ordinarily make forging quality ingots, Mr. Hargos?      A. No.

Q. What further steps would be necessary for them to make forging quality ingots?

A. The average foundry has an acid furnace and it is desirous for forging quality to have a basic-type furnace and use a double-slag method of manufacturing.

Q. Is it possible to make a forging quality ingot by pouring steel flat in sand molds?

A. I wouldn't think so.

Q. Why not?

A. Because your impurities would be all on one side of the ingot, and not at the top.

Q. And what problem would you have, then, in connection with discard?

A. Well, you wouldn't even get that far. It would crumble on the dies. [426]

\* \* \*

Q. (By Mr. Morrow): Mr. Hargos, please assume the following hypothetical facts:

750—that is referring to the quantity—of sound castings weighing approximately 540 pounds each, or a total of 404,795 pounds, being 180.5 gross tons,

(Testimony of Richard Hargos.)

located at Seattle, Washington, in August, 1952, and that the size of the castings are 91½ inches by 4 inches by 4 feet one-half inch; assume that the castings have been manufactured by a foundry by a process of pouring the steel in flat sand molds.

Are you able to state to what use or uses such material could be put?

A. In my opinion, of no use.

Mr. Gantt: Objection, your Honor, as not responsive.

Q. (By Mr. Morrow): You can answer the first part of the question "yes" or "no."

A. No; of no use.

Q. Well, are you able to state? The question is, are you able to state? A. Oh.

Q. Whether or not said material can be put to some use? [439]

The Court: The question is: Can you so state?

A. Yes.

Q. (By Mr. Morrow): And what use or uses could said material be put to? A. Scrap.

Q. Now, when you say "scrap," what do you mean? A. For remelting purposes.

Q. In other words, in your opinion the only use that said material could be put to would be for scrap metal for remelting purposes only?

A. Economically; yes.

Q. Now, would it have any value for use other than scrap, in your opinion? A. No.

Q. Mr. Hargos, are you familiar with the value

(Testimony of Richard Hargos.)

of scrap metal in August, 1952, in Seattle, Washington?      A. Yes.

Q. What, in your opinion, would be the value of said material, which I have described in the hypothetical question in Seattle in August, 1952?

A. About \$40 a gross ton.

Q. By the way, in dealing in scrap, during that period did the—did you deal in gross tons or net tons?      A. Gross tons. [440]

Q. Is that customary?      A. Yes.

Q. Now, Mr. Hargos, assume that the foregoing facts that I have stated with respect to the 750 sound castings of dimensions 9½ inches by 4 inches by four feet one-half inch are existent except that there are 54 castings at Seattle, Washington, in August, 1952, of the following dimensions: 6 inches by 3 inches by 10 feet, weighing approximately 610 pounds each, totaling 33,465 pounds or 14.9 gross tons.

Can you state—are you able to state—whether or not said material would be of any use?

A. Yes.

Q. And of what use would said material be?

A. Also scrap.

Q. Would said material be of any value for other than scrap purposes?      A. No.

Q. What, in your opinion, would be the value of said material at Seattle in August, 1952—that is, the 54 castings, 6 inches by 3 inches by 10 feet, as described in the hypothetical facts?

A. Also \$40 a gross ton.

(Testimony of Richard Hargos.)

Q. Now, in respect to your answer to the hypothetical questions in connection with the 750 castings and [441] and the 54 castings, would it make any difference in your answers if the chemical composition of the material conformed to Type A, Grade 2, as set forth in the ASTM A-17/29 specifications?

A. No.

Q. Would it make any difference if the chemical composition conformed to Type A, Grade 1, of the specifications?

A. No.

Q. Would it make any difference in your answers if the steel was kilned, or semi-kilned steel?

A. No.

Q. Would it make any difference in your answers if the risers and the gates of the sand molds—would it make any difference in where the risers or gates of the sand molds were placed?

A. No.

Q. Would it make any difference in your answers if in the process of manufacture the molds were slightly tilted for the purpose of pouring?

A. No.

Q. Now, in reference to Plaintiff's Exhibit No. 6—you have that in mind—that was the Isaacson quotation?

A. Yes.

Q. Will you state, Mr. Hargos, whether the [442] Isaacson Iron Works could have filled an order placed by Grace, or anyone else, upon the basis of the price quoted in your proposal and during the period from June through October, 1952?

A. Yes.

(Testimony of Richard Hargos.)

Q. And would they have been glad to have done so?  
A. Yes.

Q. I may have asked you, but I don't want to overlook this question:

Would a forging quality ingot pass for a billet?

A. No.

Q. And how does the Isaacson Iron Works compare in size and production to other steel producers, so far as production of forging quality steel is concerned in the Northwest?

A. We are the largest.

Q. And how do they compare in those respects on the Pacific Coast?  
A. We are the largest.

Mr. Morrow: That is all.

### Cross-Examination

By Mr. Gantt:

Q. Mr. Hargos, do you know whether the product here or the castings here were actually used after shipping? [443]

The Court: I didn't understand.

Mr. Gantt: I asked him, your Honor, if he knew whether the product here was actually used.

A. No; I don't.

Q. (By Mr. Gantt): Were those actually used?

A. No; I don't know.

Q. Do you know the intended purpose?

A. No; I don't.

Mr. Gantt: Now, if the Court please, we had subpoenaed Mr. Hargos also on another point.

(Testimony of Richard Hargos.)

The Court: You have what?

Mr. Gantt: The defendant, Pittsburgh, had subpoenaed Mr. Hargos on another point, and if counsel doesn't object, if we can make use of Mr. Hargos while he is here without having to call him back again——

Mr. Morrow (Interposing): I have no objection.

Mr. Gantt (Continuing): ——I want to talk to him with reference to his putting in the bid on behalf of Isaacson.

The Court: Are you going into that separate from your cross-examination?

Mr. Gantt: Well, if it is all right, I will just do it in this manner.

Mr. Morrow: I have no objection. I think [444] in respect to those matters they should be considered as direct examination.

The Court: Well, it probably only goes to the form of the question, is all.

Mr. Gantt: I think that is all it would go to.

Mr. Morrow: I have no objection.

The Court: All right.

Q. (By Mr. Gantt): Mr. Hargos, you stated you were the jobbing—sales jobbing manager?

You were the sales jobbing manager at Isaacson in 1952? A. Yes.

Q. And in that capacity, did you have occasion to prepare the bid which is plaintiff's Exhibit 6?

A. Yes.

Q. And was that in answer to an inquiry that

(Testimony of Richard Hargos.)

you received, handing you a portion of Exhibit No. 3, a copy of a letter dated April 23, 1953?

A. Yes.

Q. Now, you are referring to, are you, your own copy of that letter, or the original of that letter?

A. It is a duplicate of what is the court exhibit.

Q. And it was in answer to that that you submitted the proposal which is Plaintiff's Exhibit 6?

A. That is right. [445]

Q. Now, what did you do upon receipt of Exhibit 3, the inquiry; what steps did you carry out in the making out of your proposal?

A. My first step was to find out what the specifications called for, in pencil alongside of the dittoed copy which was attached to that letter that you showed me.

Q. The dittoed copy is the specifications?

A. Yes. I have written in pencil what the chemistry was that was required on both types and grades in the inquiry. That is items 1 and 2. From that I was able to determine what my cost would be and what our selling price should be.

Q. What did you then do? Did you compute—did you prepare an estimate sheet?

A. I have, just our regular form which the customer does not get, which is part of our own file on how I worked it up.

Q. May I see that, please? A. Yes.

Q. As a result of your estimate sheet, what price did you work out per net ton for the two items?

(Testimony of Richard Hargos.)

A. For the 750 billets it was \$156.50 a net ton; and for the second item \$177.50 per net ton.

Q. Now, are you aware of the steel supply situation in the Northwest in 1952, in April and May? A. Yes.

Q. What was the condition of the steel market?

A. It was very tight.

Q. What do you mean by that?

A. Steel was hard to get.

Q. Were you familiar with other steel firms in Seattle in 1952, in April and May? A. Yes.

Q. And were you familiar—did you have occasion to deal in steel? That is, did you buy and sell steel?

A. No; not their products—not their products.

Q. Did you have occasion to buy and sell any steel during this period of time?

A. No; that doesn't fall in my classification, that isn't my job.

Q. Were you familiar with the prices charged by other mills? A. Oh, yes.

Q. Is that part of your job? A. Oh, yes.

Q. Why?

A. Because we, in a sense, have to be competitive or we don't get the business.

Q. And you prepared the proposal and submitted it to Grace and Company? [447] A. Yes.

Q. And in your opinion are the prices quoted there reasonable prices for this item of 750 steel billets and 50 steel billets?

A. As manufactured by a forging shop; yes.

(Testimony of Richard Hargos.)

Q. Those are competitive, reasonable prices?

A. They are not as low as a mill would be, but they are as low as a forging shop would be, which we are.

Q. What was the steel supply and market in steel rolling mills?

A. They had large backlogs.

Q. In 1952 in April and May? A. Yes.

Q. Were there any steel rolling mills in Seattle at that time? A. There were two.

Q. What were those?

A. Northwest Steel Rolling Mill and Bethlehem.

Q. Were they both operating at that time, so far as you know? A. Yes; they were.

Q. Do you recall any telephone conversation with anyone at Grace and Company?

A. Well, I must have talked to someone. I have a note written in pencil on the face of my copy, on May 12th, [448] where I probably requested to find out if the inquiry was still active, and that I was told at that time that I was about \$30 high per ton.

Q. Did you have occasion to discuss the product which you were to supply at that time?

A. Well, I have no recollection. I doubt if it would enter my mind, that something else had been proposed.

Q. You were told that your price was \$30 high?

A. Yes.

Q. You were told that by someone from Grace?

A. Well, I assumed that. That is from information I have written here.

(Testimony of Richard Hargos.)

Q. That was on a telephone call? A. Yes.

Q. On May 12? A. Yes.

Q. Were you told who the other supplier was whose price was \$30 lower? A. No.

Q. Did you inquire?

A. It is nice to know who your competitor is, but I probably didn't; no. At least, I have no recollection of knowing who the supplier was.

Q. Now, Mr. Hargos—

A. (Interposing): I might say this, that I [449] probably assumed it was out of the area, because I knew that the mills were so tight and unable to meet the delivery requirements that I probably assumed it was in some other part of the United States that the lower bidder supplied.

Q. You said the mills—now, you mean rolling mills? A. Yes; rolling mills; that is right.

Q. They were not taking jobs of this kind?

A. No; they were taking care of their own customers. They had enough trouble even supplying them partially.

Q. Now, I believe on your direct examination Mr. Morrow gave you the—referred to 180.5 gross tons.

I wonder if you can compute for us, or have you computed for us, the value—or, rather, the total price which Isaacson would have received based on the tonnage prices that you quoted?

A. Well, I have a figure here for both items.

Q. Is that a total figure? A. Yes.

Q. What is that total figure?

(Testimony of Richard Hargos.)

A. \$33,268.75.

Q. Now, that figure you arrived at in what manner?

A. By taking the theoretical weight of each billet and dividing it by 2,000 pounds to get the net tons involved, [450] and then multiplying by the various factors as to the various prices that I had quoted.

Q. Now, if in fact the product weighed—the total weight of item 1, the 750 steel billets, weighed 180.5 gross tons, to arrive at your price for that you then multiply 180.5 by \$156.50; is that correct?

A. No; your gross tons are larger, has heavier weight by 240 pounds, than a net ton. A net ton is 2,000 pounds and a gross ton is 2,240 pounds.

Q. Then 180.5 gross tons is how many net tons—can you tell us?

A. Yes; just a moment. Very close to—wait a minute; I beg your pardon—203, approximately, net tons.

Q. 203 net tons?            A. Yes.

Q. Now, if there were—if the billets which you produced had weighed 203 net tons, at your price of \$156.50 per net ton for the 750 items, what would that work out; what would be the price of the 750 billet items?

A. Well, that of course, works out to \$33,400.

Q. \$33,400?            A. Yes.

Q. Now, if the weight of the smaller item, item 2, the 50 steel billets, was 14.9 gross tons, Mr. Hargos, [451] how many net tons would that be?

A. That would amount to 16.7 net tons.

(Testimony of Richard Hargos.)

Q. And in order—if the billets—if the small item 2, the 50 steel billets, had weighed 16.7 net tons, at your price of \$177.50 per net ton, what would the price of your item 2 have been?

A. \$2,910.

Q. \$2,910? A. Yes.

Q. I believe you stated that the prices you quoted in your proposal, in Exhibit 6, would be competitive with what other producers would charge in a forging shop?

A. A forge shop, yes; that is correct.

Q. Did you make any sales or purchases in August or September or October—well, did you make——

Mr. Gantt: Strike that.

Q. (By Mr. Gant, continuing): Did you make any sales or purchases of scrap metal in August of 1952? A. Oh, yes.

Q. You did personally?

A. Not personally; no.

Q. But you were aware——

A. (Interposing): The company did.

Q. The company did? [452] A. Yes.

Q. And you have checked those prices, have you?

A. Yes, sir.

Q. And that is the \$40 you gave us a minute ago?

A. That is an average figure; yes, sir.

Q. For the Seattle area? A. Yes, sir.

Mr. Gantt: I have no further questions, your Honor.

(Testimony of Richard Hargos.)

Mr. Morrow: I assume I am permitted to ask leading questions with respect to matters gone into?

The Court: On direct, yes; having to do essentially with the quotation.

Mr. Morrow: Well, it has to do with the conversation with Mr. Schlaugh, which I didn't go into.

### Redirect Examination

By Mr. Morrow:

Q. Mr. Hargos, you recall I asked you to check your notes to see whether you had any conversation with Mr. Schlaugh when I visited you at Isaacson Iron Works last week? A. Yes.

Q. And you did so; didn't you? A. Yes.

Q. And your notes showed no information indicating [453] that you had discussed the question of the requirements of the specifications ASTM A-17/29 With Mr. Schlaugh, did they?

A. No; they didn't.

Q. And, as a matter of fact, it is not customary for a steel producer to raise the question of the requirements of the specifications with the customer, is it? A. No; it isn't.

Q. And you don't as a rule, do you?

A. No. I might be embarrassed.

Q. You might be embarrassed because you wouldn't want to show your ignorance of not knowing what the specifications were; is that right?

A. That is right.

Q. So that in this instance you were quite well

(Testimony of Richard Hargos.)

satisfied that there was no discussion between you and Mr. Schlaugh concerning the requirements of ASTM A-17/29 specifications?      A. Yes.

Mr. Morrow: That is all.

### Redirect Examination

By Mr. Gantt:

Q. Don't you assume, however, Mr. Hargos, that your customers know what they are ordering?

A. Oh, yes. [454]

\* \* \*

### FRANK HARTMAN

upon being called as a witness for and on behalf of the Plaintiff, and upon being first duly sworn, testified as follows:

The Clerk: Will you state your name and spell your last name, please?

The Witness: Frank Hartman, H-a-r-t-m-a-n (spelling).

### Direct Examination

By Mr. Morrow:

Q. Mr. Hartman, will you please state your full name?      A. Frank Hartman.

Q. And what is your address?

A. 4070 24th Place South.

Q. And what is your occupation?

A. Mill plant superintendent.

Q. And who is your employer?

A. Isaacson Iron Works.

(Testimony of Frank Hartman.)

Q. What is a mill plant superintendent; what are your duties?

A. I have charge of telling the melters what specific metal we are pouring, and what size ingots, and adjusting the chemical composition and the general supervision of the melting. [456]

Q. How long have you been in the steel business?      A. Since 1923.

Q. And what was your first employment?

A. As chief chemist at National Brake and Electric Company at Milwaukee, a subsidiary of Westinghouse.

Mr. Gantt: Mr. Hartman, can you speak up a little louder?

The Witness: Yes, sir.

The Court: Chief chemist where?

The Witness: National Brake and Electric Company, Milwaukee, Wisconsin.

Q. (By Mr. Morrow): And how long were you so employed?      A. About four years.

Q. Who was your superior there?

A. Mr. Greenough, who was a metallurgist.

Q. He was a metallurgist; what was your next employment?

A. Chemist at Norberg Company, Milwaukee.

Q. Did you follow Mr. Greenough?

A. Mr. Greenough; yes.

Q. How long were you in that position?

A. About one year.

Q. And then what was your next position?

A. And then I took—to be temporary—a job

(Testimony of Frank Hartman.)

as [457] Chief Chemist to straighten out some trouble at a drop-forge plant at Cudahy, Wisconsin.

Q. Where is that located?

A. At Cudahy, Wisconsin.

Mr. Gantt: Can you speak louder?

The Court: Keep your voice up.

Mr. Morrow: I will examine from back here, because I would like to hear too. I will stand back here, and if I can hear, I am sure the rest of them can.

Q. (By Mr. Morrow): Where did you go from there?

A. I came out here on the Coast, to Washington Iron Works.

Q. And who was your superior there?

A. Mr. Greenough.

Q. What was his position?

A. He was foundry superintendent.

Q. And I believe you said he was a metallurgist?

A. Yes.

Q. When did you go to work at the Washington Iron Works?      A. On February 1, 1928.

Q. And how long were you at the Washington Iron Works?      A. Until 1943. [458]

Q. How many years, approximately?

A. That would be eleven years—twelve—about fifteen.

Q. What was the nature of the business of the Washington Iron Works during your period of employment with them?

(Testimony of Frank Hartman.)

A. It was an iron foundry and steel foundry.

Q. Did they have any facilities for rolling or forging?

A. They had a small blacksmith shop and a small steam hammer just for tools.

Q. But it was primarily a foundry?

A. It was primarily a foundry; yes.

Q. What was your job?

A. I was chemist and metallurgist for four years, and then Mr. Greenough left there and I was made foundry superintendent.

Q. Are you familiar with the processes used in the manufacture of steel in the foundry?

A. Yes.

Q. Now, following your employment at Washington Iron Works, where did you go?

A. To Isaacson Iron Works.

Q. In what capacity?

A. I started as a chemist and later assistant mill plant [459] superintendent, and now mill plant superintendent.

Q. I can't quite hear you, sir.

A. I started as a chemist in the laboratory, and then I became assistant mill plant superintendent and then mill plant superintendent.

Q. And how long have you been mill plant superintendent?      A. About seven years.

Q. Now, in your present capacity as mill plant superintendent at Isaacson Iron Works, what kind of work do you do?      A. Cast ingots.

Q. Yes?

(Testimony of Frank Hartman.)

A. Casting of ingots for forging of billets or shaffing.

Q. What else do you do?

A. My capacity, you mean?

Q. I can't hear.           A. At the plant?

Q. At the plant.

A. Or what I do personally?

Q. What you do, and what is done under you—both.

A. Well, I supervise the pouring of the ingots. The ingots are taken down to the forge shop and reheated [460] and put through the press or hammer and made into billets or different forgings, or whatever is required for the end product.

Q. Now, do you specialize, Mr. Hartman, in the refinement of steel?           A. Yes.

Q. By heat treatment?

A. I do not; no. That is in the heat treating department.

Q. That is in the heat treating department—is that your department?           A. No; it is not.

Q. You are in the melting department?

A. In the melting only.

Q. Now, when you were at the Washington Iron Works in the foundry, what kind of work did the foundry do under your supervision as plant superintendent, so far as the pouring of steel was concerned?

A. Well, we had an iron foundry and a steel foundry, both; and the iron foundry made diesel engine castings, and in the steel foundry we made

(Testimony of Frank Hartman.)

castings for gold dredges, locomotives, donkey engines and all sorts of jobbing work.

Q. Now, what is an ingot?

A. An ingot is a casting poured into a mold; it [461] is metal poured into a mold, subsequent to forging or rolling.

Q. Did you say subsequent to forging? You mean prior to?

A. The casting, subsequent to pouring—the casting subsequent to forging or rolling.

Q. Well, now, I perhaps misled you.

The question is: What is an ingot?

A. An ingot is a casting.

Q. An ingot is a casting. Now, what is a billet?

A. A billet is a semi-finished product of a hot rolled or forged ingot.

Q. What is a casting in the terms used as manufactured by the foundry?

A. A casting is molten metal poured into a mold. Whatever object results is the casting.

Q. What is the substantial—are the substantial differences between a casting manufactured in a foundry and a billet manufactured in a steel product plant producing forging quality ingots?

A. Well, one is cast to shape and the other has been worked from an ingot.

Q. When you say “cast to shape,” you are referring to the product produced by a foundry, are you?     A. Yes. [462]

Q. And what kind of shapes are we producing at a foundry?

(Testimony of Frank Hartman.)

A. Well, there is a pattern made. It may be a gear or an anchor, various intricate shapes. They are all made from a wooden pattern cast in a sand mold.

Q. Are those shapes and patterns used in a foundry—or, I should say, do those——

Mr. Morrow: Strike the first part of that.

Q. (By Mr. Morrow, continuing): Do those shapes and patterns used in a foundry outline the product which is in the same shape as the finished product? A. Yes.

Q. In other words, the pattern or shape used in a foundry, whether it be a gear wheel or an anchor or what not, is started out as a pattern; and what is the next process—molding?

A. It is molded in the mold.

A. It is molded in the sand mold.

A. And sand is rammed around it.

Q. And the end product is the same pattern and shape as the mold; is that right?

A. That is right.

Q. Now, would you describe—suppose that you made a gear of forging quality steel; would you describe [463] the process that you would go through or the product, plant and mill would go through in producing the same end product?

A. The ingot would be stripped from the mold and put in a reheating furnace.

Q. What would be the shape of that?

The Court: Do you have something?

Mr. Gantt: I had in inquiry as to what is the

(Testimony of Frank Hartman.)

purpose of this, that this evidence is being offered for on this point? I am not sure I follow the issues.

The Court: Mr. Morrow?

Mr. Morrow: It goes to the very issue of the case; the Pittsburgh Company, in our theory of the case, approved the manufacture of steel billets by a foundry to conform to specifications of the American Society for Testing Materials; and we are showing by this testimony that under no stretch of the imagination could a foundry produce a billet, and in order to do that, we want to show by this witness, as he has already testified, that a foundry produces an end product by starting, first of all, with a pattern——

The Court (Interposing): I think that covers it.

Mr. Morrow: Yes.

The Court: In other words, you are showing—you [465] are trying to show the difference between a casting——

Mr. Morrow (Interposing): That is right; and the difference between the two types of processes.

The Court: Very well.

Q. (By Mr. Morrow, continuing): What shape is the ingot?

A. An ingot can be various shapes, round or corrugated shapes, fluted shapes, or square.

Q. Need it necessarily compare in any respect to the shape of the end product? A. No.

Q. What is the next process?

A. It is reheated in a forging or heating furnace

(Testimony of Frank Hartman.)

and then taken under the press and worked down under the press.

Q. And what is the product that is produced?

A. It is a billet.

Q. Now, assuming, as we did, that you are going to manufacture the same gear wheel that was forged according to a pattern in the foundry, but you are going to do it by this process you now describe; what would be the next step that would be taken?

A. Well, it would be rounded up to a dimension allowing enough finish for machining and getting in intricate parts. A gear is usually one with spokes and a hub, and [465] would not be made in a forge shop.

Q. It will be? A. No.

Q. But there are products that would be?

A. Yes, like pinions.

Q. After the billet—is the billet manufactured by, say, a forging quality reduction plant subject to further heat treatment and working into desired shapes? A. Yes.

Q. And also to machining, is it not?

A. Machining, yes.

Q. You are familiar with the ASTM A-17/29—I should say, you have familiarized yourself with the ASTM 17/29 specifications? A. Yes.

Q. What does the term “secondary piping” refer to?

A. The shrinkage, cavity or void may be due to gas escaping and shrinkage of the metal.

Q. Is the term used in connection with, say,

(Testimony of Frank Hartman.)

billets or castings?      A. It is used in both cases.

Q. It is used in both cases; what does the term "blow-hole" refer to?

A. It is a gas pocket collected through the evolution of gas which does not escape during the solidification [466] of the metal.

Q. Is that in connection with the casting, or——

A. (Interposing): That is the casting.

Q. That is the casting; now, if you found blow-holes in castings, Mr. Hartman, would that be considered defective steel?

A. It would be considered a defect in the casting.

Q. Would the casting itself be considered unsound?      A. It would be unsound.

Q. And consequently a subject of rejection?

A. Yes.

Q. In your opinion, Mr. Hartman, can the specification ASTM A-17/29 in any way be used in—as a guide for the manufacturing of a casting?

A. No.

Q. Why not?

A. It refers to billets in that specification.

Q. Can, in your opinion——

Mr. Morrow: Strike that.

Q. (By Mr. Morrow, continuing): By the way, referring to Plaintiff's Exhibit No. 6, which is a quotation—I am sorry—Plaintiff's Exhibit Number 1—and the terms therein used, I would like to have you read this setting forth those specifications. [467]

I would like to have you refer to the term "or

(Testimony of Frank Hartman.)

nearest equivalent," and ask you what that term refers to, and what is meant by that?

A. It refers to the chemical composition or the grade.

Q. Does it in any way amend, alter or change the specific specification ASTM A-17/29?

A. No.

Q. Now, would you, Mr. Hartmann, have a forging quality steel by a foundry manufacturing or producing castings by a process of pouring the steel in flat molds?

A. Not unless it was good, sound metal.

Q. Well, put it another way: Is the pouring—is the pouring of steel in flat molds by a foundry a recognized method of producing forging quality steel? A. No.

Q. Is it done in that manner?

A. Forging steel?

Q. Yes. A. No.

Q. In order to make forging quality steel at a foundry, state whether or not it would be necessary to have a vertical mold? A. I would say, yes.

Q. And is it your conclusion that if you have a [468] flat mold that you do not produce a forging quality steel? A. No.

Q. Is that your conclusion? A. Yes.

Q. And what is meant by forging quality steel?

A. Steel that can be reworked in the press or rolling mill.

Q. Now, I wish to refer you to paragraph 10 (a)

(Testimony of Frank Hartman.)

of the ASTM specifications, which are contained in Plaintiff's Exhibit 41.

I will point the paragraph out to you, and ask you to examine the same.

(Whereupon, there was a brief pause.)

Q. (Continuing): Tell me what part of the process of manufacture does the paragraph in respect to chipping, being paragraph 10 (a) of the specification, relate to?

Mr. Gantt: Objection, your Honor. This is cumulative. I think Mr. Hargos went into all this yesterday step by step.

The Court: It is just a second expert on the same question, isn't it?

Mr. Morrow: Well, your Honor, the expert yesterday didn't say he had ever worked in a foundry, and this expert has said he worked in a foundry, and knows both processes intimately. [469]

The Court: Yes. I will overrule the objection.

A. That is refinement after final inspection.

The Court: Mr. Reporter, will you read the question?

(Whereupon, the following was read by the reporter: "Q. Now, I wish to refer you to paragraph 10 (a) of the ASTM specifications, which are contained in Plaintiff's Exhibit 41. I will point the paragraph out to you and ask you to examine the same. Tell me what part of the process of manufacture does the paragraph in

(Testimony of Frank Hartman.)

respect to chipping, being paragraph 10 (a), of the specification, relate to?"')

A. (Continuing): That would be the final inspections before shipment.

Q. (By Mr. Morrow): Well, does it relate to the process of manufacture in the ingot stage?

A. No.

Mr. Morrow: Well, that is all. Well——

Q. (By Mr. Morrow): Assume the following hypothetical facts, Mr. Hartman:

That there are 750 castings weighing approximately 540 pounds each, or a total of 404,795 pounds or [470] 180.5 gross tons at Seattle, Washington, in August, 1952, of the size 9½ inches by 4 inches by 4 feet one-half inch, and there are 54 castings 6 inches by 3 inches by 10 feet, weighing approximately 610 pounds each, totaling 33,465 pounds, or 14.9 gross tons, and that those castings have been manufactured by a foundry pouring the steel flat into sand molds, and assume that they are sound.

Now, what use or uses could such material be put to?

The Court: Poured steel mold?

Mr. Morrow: Pardon?

The Court: Did you say steel?

Mr. Morrow: Sand mold.

The Court: The reporter will read the question.

(Whereupon, the following was read by the reporter:)

(Testimony of Frank Hartman.)

“Q. Assume the following hypothetical facts, Mr. Hartman:

That there are 750 castings weighing approximately 540 pounds each, or a total of 404,795 pounds, or 180.5 gross tons at Seattle, Washington, in August, 1952, of the size 9½ inches by 4 inches by 4 feet one-half inch, and there are 54 castings 6 inches by 3 inches by 10 feet, weighing approximately 610 pounds each, totalling 33,465 pounds, or [471] 14.9 gross tons, and that those castings have been manufactured by a foundry pouring the steel flat into sand molds, and assume that they are sound.

“Now, what use or uses could such material be put to?”

Q. (By Mr. Morrow, continuing): Poured flat into sand molds.

Now, what use or uses could such material be put to, in your opinion? A. To remelt.

Q. To remelt? A. Yes.

Q. Would the material, in your opinion, have any value other than for scrap metal purposes?

A. No, not in that shape.

Mr. Morrow: That is all.

#### Cross-Examination

By Mr. Gantt:

Q. Mr. Hartmann, you testified that you are familiar with ASTM 17/29? A. Yes.

(Testimony of Frank Hartman.)

Q. And I believe you were asked whether ASTM 17/29 could be used with reference to making castings? A. Yes. [472]

Q. What was your answer?

A. I said "no," it refers to billets.

Q. How about the chemical requirements of ASTM?

A. They can be used in castings or anything.

Q. They can be used with reference to making castings? A. Yes.

Q. Your answer was "yes"? A. Yes.

Q. Why is that?

A. The chemical composition is different from the end product. This refers to a billet, not a casting.

In most cases you are almost always following some ASTM specification chemically.

Q. So that the chemical requirement of A-17/29 simply relates to the chemical composition of the steel? A. That is right.

Q. Whether it be a forging or a casting or a rolled product, is that right? A. That is right.

Q. You stated that the paragraph that counsel read you, being paragraph 10 (a) of A-17/29 relating to chipping, had reference to the final inspection before shipping; is that correct?

A. That is right. [473]

The Court: Is that in regard to——

The Witness (Interposing): The billet you are referring to.

(Testimony of Frank Hartman.)

Q. (By Mr. Gantt): Referring to the billet, you say?

A. Referring to the billet. It would be the grinding, grinding off of any defects before inspection.

Q. That chipping, though, is also quite common on castings, too, isn't it? A. That is true, yes.

Mr. Gantt: No other questions, Mr. Hartman. Thank you.

#### Redirect Examination

By Mr. Morrow:

Q. Mr. Hartman, I believe you said on cross-examination that—you reiterated that this specification did not refer to casting, and indicated that if casting was intended, as I understand your testimony, there were other ASTM specifications, is that correct? A. That is correct. [474]

\* \* \*

#### Recross-Examination

By Mr. Gantt:

Q. A customer could order a product according to a part of a specification in ASTM specifications, could he not?

The Court: There can be the same objection here.

Mr. Morrow: I am perfectly willing he answer it.

A. Usually in a casting specification they have the chemical composition put down too, as far as chemically.

(Testimony of Frank Hartman.)

You asked me if I could make a casting according to the chemical composition in this specification, and I said yes, you can make a casting or pour a billet or ingot with any specification, but there can be applied—the end product is going to be different in a forging than a casting. That is what I meant by my answer.

Mr. Gantt: No further questions, Mr. Hartman.

The Court: I want to ask you Mr. Hartman, with regard to chipping. You say chipping is common on castings, or something to that effect?

The Witness: Yes.

The Court: Under what circumstances do you chip, as that word is used, in connection with castings?

A. After the casting is shook out of the [477] mold, and it has to be cleaned up and the gates and risers are removed, usually by acetylene torches, the thins that run out from the casting—sometimes there is a sand pocket, and that is chipped out by welding.

The Court: That is all. [478]

\* \* \*

PARKER M. ROBINSON

upon being called as a witness for and on behalf of the defendant, and upon being first duly sworn, testified as follows:

The Clerk: Will you state your full name and spell your last name, please?

The Witness: Parker M. Robinson, R-o-b-i-n-s-o-n (spelling).

Direct Examination

By Mr. Gantt:

Q. Will you state your name, sir?

A. Parker M. Robinson.

Q. What is your address?

A. 50 Chumasero Drive, San Francisco.

Q. And what is your occupation?

A. District Manager of the Pittsburgh Testing Laboratories, in San Francisco.

Q. And how long have you held that job?

A. Since 1946.

Q. Have you been with Pittsburgh Testing prior to 1946?           A. No.

Q. Do you have a college degree?           A. Yes.

Q. In what specialty? [846]

A. I graduated from the University of Pittsburgh in 1911 with a Bachelor of Science degree in Mechanical Engineering.

I further have a degree, a post-graduate degree, from Yale University, 1916, in Mechanical Engineering.

Q. Are you a member of any professional societies?           A. Yes.

(Testimony of Parker M. Robinson.)

Q. Will you state what societies you are a member of?

A. I am a full member of the American Society of Mechanical Engineers, the Society of Naval Architects and Marine Engineers, the Structural Engineer Association of Northern California, the American Society of Testing Materials, the American Concrete Institute.

Q. Do you hold any licenses as an engineer?

A. Yes.

Q. What are they?

A. I hold professional licenses in California for Civil Engineering and Mechanical Engineering. I hold professional engineer licenses in Utah and in Oregon.

Q. You testified that you were with Pittsburgh Testing Laboratory from 1952—I mean from 1946 to the present time?      A. Yes.

Q. And has that service always been in the San [847] Francisco office of Pittsburgh?

A. All except one year. During the year 1951 I was transferred as District Manager of the Chicago District, and stayed there just about one year.

Q. And when did you return to San Francisco?

A. In February, 1952.

Q. Now, what business experience do you have, did you have prior to coming to work for Pittsburgh? Start with the job you had prior to coming to Pittsburgh in 1956—in 1956, I beg your pardon? Pittsburgh in 1956—in 1946, I beg your pardon?

A. Prior to that I had been Chief Engineer of the Engels Shipbuilding Company in Pascagoula, Mississippi.

(Testimony of Parker M. Robinson.)

Prior to that I was Chief Engineer of the Western Pipe and Steel Company in San Francisco, which was the predecessor of the present Consolidated Western Steel Division of the United States Steel Corporation.

Prior to that for 16 years I was vice president and Chief Engineer of a company called Hunt-Murk and Company in San Francisco, whose business was to design and build steam power plants.

If you want back further than that, I was with the Westinghouse Company as their steam turbine and power plant engineer for the Pacific Coast.

Q. I think that is enough of your business background. [848]

Q. Now, are you a member of ASTM, American Society of Testing Materials? A. Yes.

Q. How long have you been a member?

A. Since 1950.

Q. Is Pittsburgh Testing Laboratory a member?

A. Yes.

Q. How long has it been a member?

A. Pittsburgh Testing Laboratory was recently awarded a 50-year plaque, or some sort of a memorial, indicating that they had been members for over fifty years.

Q. When was ASTM founded? A. 1902.

Q. Now, you heard the testimony last Thursday and Friday, of Mr. Hargos, of Isaacson Iron Works, did you? A. Yes.

Q. Do you agree with Mr. Hargos' statement of the principal purposes of ASTM?

(Testimony of Parker M. Robinson.)

Mr. Morrow: Object to the form of the question as being leading, and it has no reference to any particular testimony of Mr. Hargos, and it is too indefinite and vague.

The Court: As to the purposes of ASTM? [849]

Mr. Morrow: I have no objection to his asking the witness what his idea of the purposes are; but the form of the question is, does he agree with Mr. Hargos?

The Court: I think the objection is well taken.

Q. (By Mr. Gantt, continuing): What is the purpose of ASTM, American Society of Testing Materials, Mr. Robinson?

A. I think if you will permit me to read from the book itself, it puts it in better words than I could myself.

Q. Handing you Defendant's Exhibit A-33, which is the 1939 Book of Standards, Part I, on Metals, of the ASTM Society——

The Court (Interposing): What exhibit number is that, Mr. Gantt?

Mr. Gantt: Exhibit A-33, your Honor.

Q. (By Mr. Gantt, continuing): Would you proceed?

A. It says in the frontispiece of this volume that the purposes are:

“The promotion of knowledge of the materials of engineering and the standardization of specifications and the methods of testing.”

It further states that the: [850]

(Testimony of Parker M. Robinson.)

“A.S.T.M. specifications, definitions and methods of test are used as standards for engineering materials because they are competent, unbiased, widely applicable and authoritative.” And

“A.S.T.M. standards are unbiased because each standing committee charged with the development or supervision of standards having a commercial bearing is made up of approximately equal representation of producing, consuming, and general interests, the latter including engineering consultants, schools, independent research institutes, governmental technical agencies.”

Q. Then, I take it that ASTM specifications are not only for testing, inspection, but also a guide for the producer and consumer?

A. Very much so.

Q. And what committee of the American Society of Testing Materials had jurisdiction over ASTM specification A-17/29?

A. The Committee on Steel, which is known as A-1.

Q. Does Pittsburgh Testing Laboratory have a member on this committee? A. Yes.

Q. Has it had that for some time? [851]

A. I would say for at least 30 years, and possibly more.

Q. What member of Pittsburgh Testing Laboratory was on this committee?

A. For many years Mr. A. R. Ellis, who was the Chairman of our Board, was on that A-1 Com-

(Testimony of Parker M. Robinson.)

mittee, up until the time of his death in December, 1954.

Q. Handing you Plaintiff's Exhibit 56, which is the 1930 edition of ASTM Standards, Part I, on Metals, I ask you if you are familiar with ASTM A-17/29 specification? A. Yes, I am.

Q. Were you familiar with it in 1952?

A. Yes.

Q. Now, how is it designated in the book; how is this specification designated?

A. It is designated as A-17/29.

Q. Is there anything else in the heading of it?

A. Well, it states that these specifications are: "Issued under the fixed designation A-17; the final number indicates the year of original adoption as standard, or in the case of revision, the year of last revision."

Now, this A-17 was adopted originally in 1913. It was revised in 1918, 1921 and 1929; therefore, [852] it carries the A-17/29 designation.

Q. Now, Mr. Robinson, can you define a billet, or will you define a billet?

A. I could define a billet, but I would prefer to use the definition of a metallurgical authority, and if you would let me see Henderson's "Metallurgical Dictionary," I would prefer to use that.

Mr. Gantt: This is for illustrative purposes, your Honor. We have a metallurgical dictionary of Bates and Henderson. I can further qualify this witness by asking:

Q. (By Mr. Gantt): If this Dictionary of

(Testimony of Parker M. Robinson.)

Henderson and Bates, 1953 edition, is a current metallurgical dictionary?      A. Yes, it is.

Q. And you are familiar with it?      A. I am.

Q. And is it in the trade, known in the professional engineering trade, is it a competent work on the subject of metallurgical dictionaries?

A. Yes, it is considered very authoritative.

The Court: I assume it was current in 1952?

Mr. Gant: This book is actually the 1953 edition; the 1953 edition. [853]

\* \* \*

Q. (By Mr. Gantt): I am handing you a metallurgical dictionary, it being Exhibit A-34, by J. G. Henderson, and ask you if you can, by reference to the metallurgical dictionary, define the word "billet"?

A. Yes. In this dictionary the word "billet" is given three definitions.

The first definition is:

"Any solid metal casting of cylindrical, square or rectangular shape."

Definition number two:

"A rectangular semi-finished rolled ingot with cross-section of from four to thirty-six square [855] inches, having a width less than twice its thickness.

"When the cross-section exceeds thirty-six square inches the term bloom is used. Small sizes are usually classed as bars or small billets."

The third definition:

"A solid cylindrical casting of brass, bronze or

(Testimony of Parker M. Robinson.)

copper intended for subsequent extrusion to form brass or bronze rods or tubes, or processing by the mannesmann process to form copper tubing.”

The latter definition, of course, does not apply to steel.

Q. Now, I note——

Mr. Morrow (Interposing): Pardon me. You say—well, go ahead. I will withdraw my objection and wait for the question.

Q. (By Mr. Gantt, continuing): Now, referring you to Exhibit 56, which is the 1930 edition of ASTM, Part I, on Metals, the first portion, the first paragraph, numbered paragraph one, refers to blooms and slabs? A. Yes.

Q. What is a bloom, Mr. Robinson?

A. There, again, I would prefer to go back to this dictionary, and they give bloom in here, and I quote the first definition: [856]

“A mass of wrought iron from the furnace, from which sinter and other impurities have been removed, and which have been made solid by shingling.”

The second definition:

“A bar of iron or steel, sometimes cylindrical, but usually square or nearly square in section, and not smaller than four inches on a side, formed from an ingot by forging or rolling.”

The third definition:

“A mass of iron or steel formed by forging or rolling after bushelling.”

(Testimony of Parker M. Robinson.)

Q. Now, what is the definition of a slab? That is also used in A-17/29.

A. I will also quote from this dictionary as to a slab, and it states:

“A rectangular piece of semi-finished steel from the blooming mill intended for subsequent rolling into plate.”

Q. Now, Mr. Robinson, A-17/29, paragraph 3, states:

“Basis of purchase.”

What is stated in paragraph 3 on “basis of purchase”? A. That reads as follows:

“Billets shall be purchased as semi-finished [857] rolled or forged material.”

Q. Now, what is semi-finished steel as used in the steel trade?

A. Again, I read from the dictionary. It says:

“Semi-finished”—and I quote:

“Steel in forms that require further work or treatment before it is ready for the market. It includes billets, blooms, ingots, sheet bars, slabs, wire rods, etc.”

Q. Now, what was the status of specification A-17/29 in 1952?

A. It had been superseded by other specifications, and it was, therefore, obsolete.

Q. Do you know when it was superseded?

A. The last ASTM book in which it appeared was 1942, and the 1944 book shows it superseded specifications A-27/3 and A-27/4.

Q. Now, how often are these volumes which we

(Testimony of Parker M. Robinson.)

have been referring to, Exhibit 56, and Defendant's Exhibit 33, being various editions of the ASTM standards, Part I, on Metals—how often are those issued or published?

A. The usual practice is to publish every three years. However, during the war they did get out editions every two years, because there were various changes that [858] were coming along pretty fast.

Q. What volume of the ASTM Standards, Part I, on Metals, was current in the year 1940—in the year 1952?      A. The 1949 edition.

Q. Now, in your business in San Francisco, in the Pittsburgh Testing Laboratory, how do you look up a specification if a request is made to inspect to a specification?

A. There is an index in each volume and you look up that index and find out the page, and turn to that page.

Q. And if a particular specification number does not appear in the index, how do you find it?

A. When a specification number does not appear, it is apparent that it has been superseded and you go to the previous volume and look in the index there.

If it isn't there, you go to the next previous volume until you work back to the point where you do find it.

Q. Now, Mr. Robinson, are you familiar with the Grace order for inspection to Pittsburgh of billets involved in this case?      A. Yes.

Q. Will you tell us when you first—your first

(Testimony of Parker M. Robinson.)

connection or contact with this order of Grace for Pittsburgh to inspect? [859]

A. My first knowledge of the order came through Mr. Clark of our office, who came to me and told me that he had had telephone conversations with Mr. Gips of the W. R. Grace Company, and that he had given us an order to inspect certain steel products.

Q. What did you do then?

A. We discussed it and since it was apparently in a rush, I suggested that Mr. Clark call our Seattle office, since the work was to be done in the Seattle district, and give them complete information as to the execution of the order.

Q. Now, do you know or can you fix the date of your conversation with Mr. Clark, the first conversation with Mr. Clark concerning the order with Grace and Company?

A. I made notes of that conversation and dated them.

Q. Handing you what has been admitted as Plaintiff's Exhibit 67, I ask you if you can identify those notes? A. Yes, those are my notes.

Q. Then will you tell us, if you can, first, the date of your conversation with Mr. Clark?

A. Yes, these notes are dated May 16, 1952. My conversations with Mr. Clark were on that day.

The Court: May 16th? [860]

The Witness: May 16, 1952.

Q. (By Mr. Gantt): What was your next connection with the order of Grace and Company?

(Testimony of Parker M. Robinson.)

A. We received a letter from Mr. Gips confirming that he had given us his order. I think that was on the 20th, and I answered that letter acknowledging receipt of his letter the very next day, the 21st.

Q. Handing you Plaintiff's Exhibit 21, is that the letter you received——

A. (Interposing): Yes, it is.

Q. (Continuing): ——from Grace and Company on the billets?

You stated you answered it. When was this received by you? Does it show?

A. Yes, our receiving stamp is on here. It was received May 21st. The letter is dated May 20th.

Q. And you wrote an answer or an acknowledgment of the letter? A. Yes, I did.

Q. Handing you Exhibit 22, will you state what that is?

A. I acknowledged Mr. Gips' letter by writing him a letter on May 21st.

Q. What was your next connection, or what did you [861] do next in connection with this order?

A. We had, as is usual, an internal job order made up and a copy of that was sent to our Seattle office to go with the forwarding letter.

Copies also, of course, went to our Pittsburgh headquarters.

Q. Handing you what has been marked Defendant's Exhibit A-7, I will ask if that is the job order you refer to? A. Yes, it is.

Q. And was that prepared under your direction

(Testimony of Parker M. Robinson.)

in San Francisco?           A. It was.

Q. Handing you Defendant's Exhibit A-6, will you state what that is? Is that the covering——

A. (Interposing): This is the covering letter going to Seattle office of P. T. L. enclosing this work order; and, incidentally, it refers back to Mr. Clark's letter here, giving them instructions, confirming the verbal instructions.

Q. Now, this letter, Exhibit A-6, was written by you, Mr. Robinson?           A. Yes.

Q. That is your signature?

A. That is correct. [862]

Q. And the job order, A-7, was attached to it and sent on up to Mr. Johnson?           A. Yes.

Q. And this was prepared under your direction, and you saw it as you signed this letter?

A. That is right.

Mr. Gantt: I offer these in evidence, your Honor, Defendant's Exhibits A-6 and A-7.

Mr. Morrow: Objected to solely on the grounds that they tend to vary the terms of the written contract between Grace and Pittsburgh.

The Court: The Court's ruling would be the same with respect to these exhibits as to the others. They are received as evidence of transactions relating to the matters covered by the alleged contract and they may or may not serve to vary the terms of the contract. I don't think they can be admitted for that purpose.

Mr. Gantt: They are admitted, though?

The Court: They are admitted.

(Testimony of Parker M. Robinson.)

(Defendant's Exhibits Nos. A-6 and A-7 admitted in evidence.)

Q. (By Mr. Gantt): Now, you stated that your first connection with the steel order, or the order to inspect the billets, from Grace and Company, was when Mr. Clark came in—— [863]

A. (Interposing): Yes.

Q. (Continuing): ——and talked to you, May 16th; and did Mr. Clark give you any communication or notes at that time?

A. Yes, he did.

Q. I hand you what has been marked for identification as Defendant's Exhibit A-1, and ask you if you can identify the handwriting?

A. Yes, I am quite familiar with Mr. Clark's handwriting, and this is it.

Q. That is what?

A. Mr. Clark's handwriting.

Q. Can you tell us what the exhibit is?

A. This is Mr. Clark's notes on his conversation with Mr. Gips of W. R. Grace Company regarding the order which they had agreed upon.

Q. And were those handed to you?

A. Yes.

Q. By whom?                      A. By Mr. Clark.

Q. On what day?

A. The 16th of May, 1952.

Q. Did you later return those to Mr. Clark?

A. I did.

Mr. Gantt: I offer this in evidence. [864]

(Testimony of Parker M. Robinson.)

Mr. Morrow: The same objection as made with respect to A-6 and A-7.

The Court: That is the only ground of the objection?

Mr. Morrow: Yes, your Honor.

The Court: Is Mr. Clark present? Is he going to testify?

Mr. Gantt: Yes, your Honor; he is present. The witness has identified his handwriting, and the two gentlemen have worked together. I can ask that question to go over if your Honor would like.

Mr. Morrow: I am satisfied Mr. Clark will testify they are his notes.

The Court: I don't know, if that is the only objection that I would sustain the objection. There are other objections that would make it not admissible, but if it is solely that it tends to vary the terms of an integrated contract I wouldn't receive it for that purpose, but not recognize that as sufficient grounds to exclude it.

Mr. Morrow: You mean you will receive it on grounds——

The Court (Interposing): Relating to circumstances surrounding the transaction, which may have some bearing on the meaning or interpretation of the contract as well as possibly, ultimately, if the Court should so [865] find it may have a bearing on what the Court concludes is the contract; but as notes I would think that as such they are admissible.

Mr. Gantt: Well, the authenticity and the fact

(Testimony of Parker M. Robinson.)

that they were made and that they were inter-office records was agreed upon in the pretrial order.

The Court: They will be admitted as indicated.

(Defendant's Exhibit No. A-1 admitted in evidence.)

Q. (By Mr. Gantt): Now, Mr. Robinson, I will hand you what has been marked Defendant's Exhibit A-3, and ask if you will—if you can identify the signature appearing on that letter?

A. Well, this letter—

Q. (Interposing): Can you identify the signature first?

A. Yes, I can. It is Mr. W. W. Clark's, and I recognize his signature.

Q. And he is in your office in San Francisco?

A. Yes.

Q. And has been there for how many years?

A. Since 1948.

Q. He was there in 1952? A. Yes.

Q. Will you state what Exhibit A-3 is? Did it ever [866] come to your attention?

A. Yes. This is a letter of May 17, 1952, from Mr. Clark to our Seattle office, telling him that we had an order for certain things, and how to inspect for it.

Q. And did you see the letter before it was sent out? A. Yes.

Mr. Gantt: I offer Defendant's Exhibit A-3.

Mr. Morrow: I object to this on the ground that

(Testimony of Parker M. Robinson.)

it tends to vary the terms of the written agreement between Grace and Pittsburgh.

Mr. Gantt: I offer Exhibit A-3 in evidence.

The Court: The Court will receive this on the same basis as the others, not for the purpose of varying terms of the agreement, but as one of the circumstances surrounding the transaction.

(Defendant's Exhibit No. A-3 admitted in evidence.)

Q. (By Mr. Gantt): Now, do you have the 1930 edition of ASTM there, Mr. Robinson?

A. Yes.

(Whereupon, there was a brief pause.)

Mr. Gantt: Excuse me a minute, your Honor.

(Whereupon, there was a brief pause.) [867]

Q. (By Mr. Gantt): Now, you have testified, Mr. Robinson, that you are familiar with the order from Grace and Company to Pittsburgh to inspect steel billets produced at the Seattle Foundry?

A. Yes.

Q. In May, 1952? A. Yes.

Q. Now, I wish you would please take—please refer to ASTM A-17/29 specifications, which is Plaintiff's Exhibit 56, and refer to the first paragraph thereof.

A. The first paragraph states that the term, "billet," is used in these specifications "to include blooms, billets and slabs."

(Testimony of Parker M. Robinson.)

Mr. Gantt: If the Court please, I would like permission to read Defendant's Exhibit A-1.

The Court: A-1?

Mr. Gantt: I have it here. Defendant's Exhibit A-3—into the record at this time.

The Court: All right.

Mr. Gantt: Defendant's Exhibit A-1 is previously admitted.

It states:

“Seattle office.

“Order from W. R. Grace and Company, 2 [868] Pine Street, S. F.

“Mr. Gips.

“200 tons cast steel billets approximately divided:

“750 billets 9½ inches by 4 inches by 4 feet, 0 and ½ inches, A-17/29, Type A, Grade 2.

“50 billets 6 inches by 3 inches by 10 feet 0 inches, A-17/29, Type A, Grade 1.

“Sample each heat (ladle sample is best) for analysis, and send drillings to us about one and one-half ounces.

“Inspect for visual defects that cannot be chipped out easily. Watch Grade 2 for internal pinholes on sand cast billets.

“Steel going to New Zealand Government Trade Commission.

“Price \$4.00 hour for inspection and sampling. \$10.00 a sample for C.Mn.P.S. and Si.

“Shipment in 60 to 90 days.

“Contact Foundry and be prepared to obtain samples and inspect billets.”

(Testimony of Parker M. Robinson.)

And then in the letter of May 17th, inter-office letter from Mr. Clark to the Seattle office of Pittsburgh Testing Laboratory:

“We have received the following order from [869] W. R. Grace and Company to be executed in Seattle.

“200 tons cast steel billets approximately divided:

“750 billets 9½ inches by 4 inches by 4 feet 0 and ½ inches, A-17/29, Type A, Grade 2.

“50 billets, 6 inches by 3 inches by 10 feet 0 inches, A-17/29, Type A, Grade 1.

“Sample each heat (ladle sample is best) for analysis and send drillings to us, about one and one-half ounces.

“Inspect for visual defects that cannot be chipped out easily. Watch Grade 2 for internal pinholes.

“Steel going to New Zealand Government, Trade Commission.

“Price \$4.00 per hour for inspection and sampling. \$10.00 a sample for C,Mn,P,S, and Si.

“Shipment in 60 to 90 days.

“Please contact Seattle Foundry Company and be prepared to obtain samples and inspect billets.

“Copy of order will follow.

“W. W. Clark.”

And then I would like to read, have permission to read, Exhibit A-7, which is the job order, which Mr. Clark referred to — Mr. Robinson referred to. [870]

It is entitled:

“Pittsburgh Testing Laboratory.

“Date, 5-21-52.

(Testimony of Parker M. Robinson.)

“Order No. SF 5799.

“Contract from W. R. Grace and Company, No. 2 Pine Street, San Francisco, California.

“To inspect (give description of contract and quantity) 800 steel billets at Seattle Foundry Company, chemical analysis of samples for shipment to New Zealand Government Trade Commission.

“750 billets, specifications ASTM A-17/29, Type A, Grade 2, 9½ inches by 4 inches by 4 feet ½ inch; 50 billets, specifications ASTM A-17/29, Type A. Grade 1, 6 inches by 3 inches by 10 feet.

“800 billets, 200 tons cast steel.”

Mr. Morrow: I beg your pardon, estimated tons.

Mr. Gantt: “Estimate quantity.”

I am not sure whether that is before it or not. The words “estimated quantity.”

“800 billets, 200 tons cast steel.”

“Contract placed with Seattle Foundry Company, Order No. Ltr 5-20-52.

“Work will commence 8-15 to 9-15-52.”

The Court: 8-15?

Mr. Gantt: 8-15. [871]

The Court: Does that mean August 15th?

Mr. Gantt: I gather that means August 15 to 9-15.

“Make 6 copies of reports to be sent as follows:

“2 to Pittsburgh,” or “PTG”;

“1 to SF file; 1 to Seattle file.

“Seattle to report on sampling and inspection to San Francisco who will combine this with analysis and make report to client.

(Testimony of Parker M. Robinson.)

“Price \$4.00 per hour, analysis \$10.00 per sample plus expenses.

“Total estimated value of inspection, \$150.00.

“Render bills to above.

“Make 3 copies of bills to be sent as follows:

“2 to above, 1 to S.F. file.

“Remarks:

“Sample each heat (ladle sample is best), inspect for visual defects that cannot be chipped out easily. Watch Grade 2 for internal pinholes. Seattle to sample and inspect, San Francisco to analyze and report.”

Q. (By Mr. Gantt): Is that the purchase order that you testified to? A. That is correct.

Q. Now, with respect to the ASTM volume which you [872] have in front of you——

Mr. Gantt: Pardon us one minute.

(Whereupon, there was a brief pause.)

Q. (By Mr. Gantt, continuing): Now, will you refer to Exhibit 56, which is the specification that you have in your hand, A-17/29?

Mr. Morrow: Do you mean Exhibit A-7?

The Witness: No. 56.

Mr. Gantt: No, he has Exhibit 56.

Mr. Morrow: Very well; I am sorry.

Mr. Gantt: That is the standard specifications.

Mr. Morrow: That is your copy.

Q. (By Mr. Gantt): Then refer to paragraph 3 on “basis of purchase.” Will you read that, please?

A. Paragraph 3 reads as follows:

(Testimony of Parker M. Robinson.)

“Billets shall be purchased as semi-finished rolled or forged material.” [873]

\* \* \*

All right, Mr. Gantt, you may proceed.

Q. (By Mr. Gantt, continuing): Mr. Robinson, I believe you testified of your familiarity with ASTM A-17/29 as it appears in the exhibit—I believe it is Exhibit 56, which you have in front of you.

I think you have also testified that you are familiar with the contents of Mr. Clark’s letter of May 17 to the Seattle office of the Pittsburgh Testing Laboratory? A. Yes.

Q. Now, with reference to an inspection in accordance with Mr. Clark’s letter of May 17, and with reference to ASTM A-17/29, will you state whether paragraph 3 is applicable——

A. (Interposing): No.

Mr. Morrow: Now——

Q. (By Mr. Gantt, continuing): ——to such an inspection?

Mr. Morrow: Your Honor, I don’t at this point understand the purpose of Mr. Gantt’s questioning.

If it is for the purpose of proving an oral agreement in variation or in contradiction of the written agreement made up by the two letters, I wish to interpose an objection. [884]

If it is for the purpose of proving performance of an oral contract—that is, the performance of an oral contract—which is not as yet in evidence, I object for the reason that it is indirectly trying to

(Testimony of Parker M. Robinson.)

prove an oral contract in variation with the written contract.

The Court: The reporter will read the question.

(Whereupon, the following was read by the reporter: "Q. Now, with reference to an inspection in accordance with Mr. Clark's letter of May 17, and with reference to ASTM A-17/29, will you state whether paragraph 3 is applicable to such an inspection?")

Mr. Morrow: And I object on the ground it is immaterial.

The Court: The question here is as to an inspection made under this letter which is A-3, inter-office communication between Clark and the Seattle office?

Mr. Gantt: Yes, your Honor.

The Court: Now, if he is testifying as an expert, that is one thing; I would think that is the only manner in which he could testify.

Mr. Gantt: He is testifying as an expert, your Honor.

The Court: And as expert testimony, I [885] think it may be admissible, but I don't know that that would—that is, as I construe the question.

Mr. Gantt: Yes, your Honor.

Mr. Morrow: May it be understood that my same objection goes to all this line of testimony, as to Mr. Robinson?

The Court: All right, if you wish your objection to show.

Mr. Morrow: Yes.

(Testimony of Parker M. Robinson.)

Q. (By Mr. Gantt): Now, do you, Mr. Robinson, want the question read back?

A. No, I know the question, and the answer is: "No, it does not apply."

The Court: You are speaking now of paragraph 3?

Mr. Gantt: Three.

The Court: Of the specification?

The Witness: Right.

Q. (By Mr. Gantt): Why doesn't paragraph 3 of ASTM A-17/29 apply, Mr. Robinson?

A. Because we were asked to inspect cast steel billets, and this refers to rolled and forged material.

Q. Does paragraph 4 apply?

A. Paragraph 4 reads: "That the steel shall be [886] made by either or both of the following processes, open hearth or electric furnace."

That does apply.

Q. Does paragraph 5 apply?

A. Paragraph 5 reads:

"A sufficient discard shall be made from each ingot to secure freedom from injurious piping and undue segregation."

That does not apply.

Q. Why not, Mr. Robinson?

A. Because in this case we do not go through the stage of pouring an ingot and then rolling it down or forging it down to a billet. These billets were cast in their final size and shape.

Q. Does paragraph 6 apply?

A. Paragraph 6 reads:

(Testimony of Parker M. Robinson.)

“Unless otherwise specified the billet shall be made from ingots of at least three times the cross-sectional area of the billet.”

That does not apply.

Q. Why not?

A. My answer is very similar to the previous one, that the pouring into ingots and then reducing to billets by rolling or forging was not contemplated.

Q. Does paragraph 7 of ASTM A-17/29 [887] apply?

A. Paragraph 7—I don’t think I need to read it all—it refers to the chemical analysis and chemical composition of the steel in the casting, and that, of course, does apply.

Q. Does paragraph 8 apply?

A. That is in regard to the ladle analysis of the steel, and, of course, that does apply. It is chemical composition again.

Q. Does paragraph 9 apply; 9(a)?

A. Paragraph 9(a) calls for a check analysis by samples taken directly from the billets, and it doesn’t apply because we had already sampled the steel that went into the billets by means of the ladle analysis.

Q. Does 9(b) apply?

A. No, paragraph 9(b) does not apply, because it is applicable to Grade 2 billets which are of a different chemical composition than called for on this transaction.

Q. Does paragraph 10(a) and (b) apply?

A. Paragraph 10 has to do with how the billets

(Testimony of Parker M. Robinson.)

are chipped and prepared for surface defects, how small defects are eliminated. That does apply.

Q. Does paragraph 11 apply?

A. Paragraph 11 is rather short. It says, "The billets shall be free from injurious defects and shall have a workmanlike finish." [888]

A. Yes; that applies.

Q. Does paragraph 12 apply?

A. Paragraph 12 is in regard to marking the billets, and that does not apply for the reason that 12(a) says, "The melt number shall be legibly stamped on each billet 6 inches or over in thickness or on billets of smaller sections when so specified."

Now, these billets were not over 6 inches in all of their cross-sectional dimensions, and we were not asked or specified to have them marked by the purchaser, so that it does not apply.

Q. Does paragraph 13 apply?

A. Paragraph 13 is a general paragraph regarding inspection, and that the inspector will have free entry into the plant, and so forth.

That is quite standard in most of the ASTM specifications, and, of course, would apply.

Q. What is paragraph 14?

A. Paragraph 14 is on the subject of rejection, and paragraph 14(a) states that, "Unless otherwise specified any rejections based on tests made in accordance with section 13(b)"—those are chemical analysis—"shall be reported within five working days from the receipt of samples."

Q. Does that apply? [889]

A. Yes, that applies.

(Testimony of Parker M. Robinson.)

Q. What is paragraph 14?

A. 14(b) says that "billets which show injurious defects while being finished by the purchaser will be rejected, and the manufacturer shall be notified."

That definitely applies.

Could I make any explanation to that?

Q. Well, no. Why would that apply? Would you explain why that applies?

A. It applies for this reason, that the inspection of the billets under this specification, and for surface defects only, many defects which could not be seen from viewing the billets from the outside might be found later by the purchaser at the time he was using those billets to machine them down to the finished part, the finished part for which they were using the billet, or maybe forging it down and rolling it down still further.

If they find internal defects, those then should be immediately reported to the manufacturer.

Q. Does paragraph—what is paragraph 15 concerned with?

A. Paragraph 15 is a matter of rehearing on any dispute about the chemical analysis. It does not apply in this case, since there was no controversy regarding the chemical analysis. [890]

Q. Now, Mr. Robinson, did Pittsburgh Testing Laboratory carry out its assignment given it by Grace in this case? A. Yes.

Q. And did Pittsburgh supply Grace with written reports of its inspection? A. Yes.

(Testimony of Parker M. Robinson.)

Q. I hand you what has been marked Plaintiff's Exhibit No. 25. Will you tell me what those are?

A. Those are reports issued by our Seattle office covering the inspection.

Q. Did they come to your attention?

A. A copy of them came to my attention.

Q. Shortly after they were prepared?

A. Yes.

Mr. Morrow: Is that 35?

Mr. Gantt: That is 35.

Q. (By Mr. Gantt): Mr. Robinson, did anyone from Grace in San Francisco tell you what the intended use of the billet was? A. No.

Q. Mr. Robinson, handing you what has been previously—what is marked as Exhibit 1, and previously identified as the letter dated April 3rd from the Grace [891] office in Washington, D. C., to the Grace office in San Francisco concerning obtaining inquires to fill an order for the New Zealand Government Trade Commission, have you seen that order prior to the claim in this case? A. No.

Q. Handing you what is marked Exhibit 11, which purports, and it has been identified as the purchase order which Grace and Company received from the New Zealand Government Trade Commission with respect to the billets in question here, had you seen that purchase order prior to the claim made by Grace against you in this case? A. No.

Q. Mr. Robinson, do you recall having written a letter to Mr. Gips shortly after the claim of the New Zealand Government came to your attention?

(Testimony of Parker M. Robinson.)

A. Yes, I do.

Q. Handing you what has been marked and admitted as Plaintiff's Exhibit 49, being a letter dated June 9, 1953, can you identify that?

A. Yes, I wrote that letter.

Q. And that letter was written by you on June 9, to whom?

A. To the Grace Company, to the attention of Mr. C. P. Gips.

Q. In San Francisco? [892]

A. In San Francisco.

The Court: Is that in evidence?

Mr. Gantt: Yes, your Honor.

The Court: What is the number?

Mr. Gantt: This is 49.

The Court: 49?

Mr. Gant: 49.

Q. (By Mr. Gantt): Now, did you hear the testimony of Mr. Murphy that he wrote a letter dated May 16, 1952, to W. R. Grace and Company, advising W. R. Grace and Company that he intended to pour the billets in sand molds, pouring both sizes flat? A. I heard that testimony, yes.

Q. Now, at the time you wrote this letter of June 9, 1953, did you know that Seattle Foundry had written such a letter——

Mr. Morrow (Interposing): Objected to as immaterial.

Q. (By Mr. Gantt, continuing): to Seattle Foundry or to W. R. Grace and Company?

(Testimony of Parker M. Robinson.)

Mr. Morrow: Pardon me. I object to the question as being immaterial.

The Court: Well, the exhibit is in. Either [893] it is material or not. The exhibit being in, I think the question is proper, and the objection is overruled.

Mr. Gantt: I think we had better have the question read back.

The Witness: Will you read the question?

The Court: The reporter will read the question.

Mr. Gantt: Will the reporter read the question?

(Whereupon, the following was read by the reporter: "Q. Now, at the time you wrote this letter of June 9, 1953, did you know that Seattle Foundry had written such a letter to Seattle Foundry, or to W. R. Grace and Company?"')

A. No.

Q. (By Mr. Gantt): If you had known that such a letter had been written by Foundry to Grace and Company about the time that they entered into an agreement to furnish billets, would that have changed your letter of June 9, 1953?

Mr. Morrow: Objected to as immaterial. The letter speaks for itself.

The Court: Objection overruled.

A. My answer to that is that, of course, it would have changed my letter. [894]

Q. (By Mr. Gantt): And is it a fact that you did not know at the time of the letter of June 9, 1953, what the—that Grace and Company—no, that

(Testimony of Parker M. Robinson.)

Foundry contended it had been hired to furnish cast steel billets?

Mr. Morrow: Objected to as leading.

The Court: The reporter will read the question.

(Whereupon, the following was read by the reporter: "Q. And is it a fact that you did not know at the time of the letter of June 9, 1953, what the—that Grace and Company—no, that Foundry contended it had been hired to furnish cast steel billets?"')

A. I had had no contact with the Foundry.

The Court: Just a minute.

Mr. Gantt: I will withdraw the question, your Honor; I will withdraw the question.

Q. (By Mr. Gantt): You testified that you were with Pittsburgh Testing Laboratory and came to work with them in 1956 as District Manager of the San Francisco office—1946—correct?

A. Correct.

Q. And so you worked for them for approximately nine or ten years——

A. (Interposing): Yes. [895]

Q. (Continuing): ——that capacity?

In your years of work at Pittsburgh Testing Laboratory, have you had occasion to inspect and test products for your customers to comply with only a portion of ASTM specifications?

A. Yes, many times.

Q. Can you give us an example?

A. Well, we had an example very recently.

(Testimony of Parker M. Robinson.)

An order came to us from a large engineering and contracting company to inspect some alloy steel pipe. That is stainless steel pipe.

There was a shipment consisting of six-inch and ten-inch diameter pipe, which was at that time in the storage yard of a large oil refinery in the San Francisco Bay area.

Now, their instructions to us were to inspect that pipe in accordance with ASTM specification A-158 to determine chemical composition, and a visual inspection to determine the condition of the pipe of the surface.

Now, there are many other things in that inspection such as hydrostatic tests, flattening tests, tensile tests, bend tests, all of which would apply to that pipe from that specification; but the customer only asked us to inspect for certain qualities.

I think another good example is a very—has [896] a very wide range in that case, and that is the specification of concrete aggregates, that is, sand and gravel.

Now, the ASTM specification which that covers tests and inspects for grading analysis. That means the size, grading, specific gravity, organic material in the sand, silt and clay, soft particles, tests for abrasion, tests for soundness, tests for mortar making qualities, tests for alkali reactivity, and for maybe more. That is as far as my memory will serve.

However, I would say in 99 cases out of 100 we are called upon by structural engineers or architects

(Testimony of Parker M. Robinson.)

or building inspectors to test for only certain portions of that specification, although they definitely refer to that specification.

I think those are two good examples, and there are many more.

I would say offhand that a very large percentage of our work involves only a part of an ASTM specification, and I think that is perfectly logical when you realize that one of the principal functions of ASTM specification is the, is to provide an understanding between purchaser and supplier of what they are getting, and in many cases such contracts for purchase are made in accordance with the specification without any inspection being made at [897] all.

It is really up to the purchaser as to what inspection he wants, and how much.

Mr. Gantt: Your Honor, excuse me just one minute.

(Whereupon, there was a brief pause.)

Q. (By Mr. Gantt): Mr. Robinson, handing you what has been marked for identification as Defendant's Exhibit No. A-17, will you state whether you are familiar with that, or not?

A. Yes, this is a letter which I wrote to Mr. Johnson in our Seattle office on August 13, 1952. I remember that.

Q. Is this just a copy of that letter?

A. That is our office copy on yellow paper, yes.

Q. A carbon copy?                      A. Yes.

(Testimony of Parker M. Robinson.)

Mr. Gantt: I will offer this, your Honor. I don't think there is any objection to it.

Mr. Savage: No objection.

Mr. Morrow: I have no objection to it.

The Court: What is the number of that?

Mr. Gantt: It is No. A-17.

The Court: May I see it?

(Whereupon, there was a slight pause, and counsel handed document to the Court.) [898]

Mr. Gantt: That is another carbon copy, your Honor.

Q. (By Mr. Gantt): Can you state in what connection this letter was written?

A. There was some question about the chemical content of certain heat numbers, and this asked for a recheck on the carbon content of certain heats.

Q. And you just passed that information along?

A. Just passed that information along so that it could be complied with. [899]

\* \* \*

Q. Now, Mr. Robinson, you have read Exhibit 21. I think you testified that you received that letter from Mr. Gips dated May 21st? [904]

A. Yes.

Q. Is that correct? A. That is correct.

\* \* \*

Q. Now, Mr. Robinson, will you refer to paragraph 13(b) of the specification, please, and will

(Testimony of Parker M. Robinson.)

you state whether Pittsburgh, as an inspection agent, as an inspector under these specifications, is authorized to accept the product on behalf of its customers without further authority?

A. My answer to that is no, and I would like to [905] clarify that, or explain it a little.

The Court: You may explain it, if there is no objection.

A. (Continuing): Our province in inspecting and testing is to make that inspection and test in accordance with our customer's instructions and to report our results.

We do not accept that material without qualification because the customer always reserves the right to reject it at a later date if something is found to be defective, which could not be found in the original inspection, as is shown in—that is what is provided therein—Section 14(b) of this particular specification.

Q. (By Mr. Gantt): I hand you Plaintiff's Exhibit No. 34, and refer you to the first sentence thereof, being the letter of July 22nd to Mr. Gips of the Seattle office.

Will you read that?

A. It says:

“Upon receipt of your TT we sent you our agreement and instructed you to order the representative of Pittsburgh Testing Laboratory to approve for shipment the 8 billets in which manganese content ran higher than specifications for these billets indicated.”

and admitted as Plaintiff's Exhibit 47, being a letter from Mr. Gips to Pittsburgh Testing Laboratory, (Testimony of Parker M. Robinson.)

End of the sentence. [906]

The Court: That is Gips to whom?

Mr. Gantt: To W. R. Grace, in Seattle. It came to Mr. Vanderbilt's attention, and Mr. Schlaugh's attention.

(Whereupon, there was a brief pause.)

Mr. Gantt: Excuse me just a minute.

(Whereupon, there was a brief pause.)

Q. (By Mr. Gantt): Mr. Robinson, handing you what has been marked Defendant's Exhibit—Plaintiff's Exhibit 20, being a letter of May 16, 1952, from W. R. Grace and Company to Seattle Foundry Company, I ask you when was the first time you saw that letter or a copy of that letter?

A. Not until after the claim had been made.

Q. In that connection I hand you what is marked attention Mr. Robinson, dated June 4, 1953.

Have you—did that letter come to your attention?

A. Yes, that came to my attention. There are my initials.

Q. When did you receive that letter?

A. The receiving stamp says June 5, 1953.

Q. And will you read the letter, please? [907]

A. It is addressed to Pittsburgh Testing Laboratory, attention Mr. Parker M. Robinson, from Mr. Gips.

“With reference to our letter of May 22 and tele-

(Testimony of Parker M. Robinson.)

phone conversation with your Mr. Clark, we hereby enclose copies of the following original documents:

“1. Offer made by Seattle Foundry Company, Inc., dated May 2, 1952.

“2. Offer made by Seattle Foundry Company, Incorporated, dated May 13, 1952.

“3. Purchase order of W. R. Grace and Company, Seattle, dated May 16, 1952.

“We are awaiting your reports at the earliest opportunity.”

Q. And it is your testimony that you did not see this letter of May 16th from Grace to Foundry, being Exhibit 20——

Mr. Morrow (Interposing): Object to.

Q. (By Mr. Gantt, continuing): ——until you received this letter?

Mr. Morrow: Object to the form of the question, and repetition. He went into that subject before.

The Court: Objection overruled. It may be repetition, but he may answer.

A. The answer is no. [908]

Q. (By Mr. Gantt): Is the San Francisco office of the Pittsburgh Testing Laboratory licensed to do business in California as a firm of consulting engineers?      A. No.

Q. Did you hear the testimony of Mr. Hargos and Mr. Hartman and Mr. Williams that there is no such thing as a cast steel billet?

A. Yes, I heard the testimony.

Q. Do you agree with those witnesses?

A. No, I do not.

(Testimony of Parker M. Robinson.)

Q. What is a cast steel billet?

A. A cast steel billet is a steel casting in the shape and size of a billet which can be of rather wide range but it is for the purpose of furnishing material to a forge shop for further forging.

Mr. Morrow: May I have that answer repeated, please, by the reporter?

The Court: The reporter will read the answer.

(Whereupon, the following was read by the reporter: "A. A cast steel billet is a steel casting in the shape and size of a billet which can be of rather wide range but it is for the purpose of furnishing material to a forge shop for further forging.") [909]

Q. (By Mr. Gantt): Is it only for forging, or might it be for rolling?

A. It could be for rolling, but it is usually for the purpose of forging, because it is usually used by the smaller forge shops.

At times when there is a shortage of steel and they cannot get the rolled billets.

Q. I hand you Exhibit B-1, being page 2-24 of Kent's Mechanical Handbook, and with reference to the portion of A-17/29, what is indicated by the words in Kent's Handbook there?

A. Well, it says here in the left-hand column, A-17/29, and the next column which is headed "material," it has, "Carbon steel and alloy steel blooms, billets and slabs for forgings."

Q. With reference to A-17/29 specifications

(Testimony of Parker M. Robinson.)

which you have in Exhibit 56, does the title of ASTM A-17/29 indicate that the billets are for forging also?      A. That is correct.

Q. And what does it state there?

A. "Standard specifications for carbon steel and alloy steel blooms, billets and slabs for forgings."

Q. Mr. Robinson, assume that you are in the inspecting business and that you have an order to inspect [910] certain billets, slabs or blooms that are in a steel jobber's yard in San Francisco which had been manufactured previously in the East—for example, in Pittsburgh or Youngstown, Ohio—what portion of the requirements of A-17/29 could you inspect for under those circumstances?

A. Well, it is quite obvious that——

Mr. Morrow (Interposing): May I interpose an objection?

It seems to me that this question is immaterial. The particular product here certainly was not in San Francisco, and the hypothetical question does not involve any facts of this case.

The Court: In what respect are the facts analogous?

Mr. Gantt: Well, I will withdraw the question.

(Whereupon, there was a brief pause.)

Q. (By Mr. Gantt): Mr. Robinson, have you ever met Mr. George Mahoney of W. R. Grace and Company, San Francisco?      A. Yes; yes.

Q. When did you first meet Mr. Mahoney?

(Testimony of Parker M. Robinson.)

A. I first met Mr. Mahoney after the controversy about this case arose and he came to my office for a conference, together with a Mr. Wallace, who, I understand was a lawyer for the Grace Company; and in that conference [911] there was also Mr. Emmett from our Pittsburgh office, and Mr. Ruby and myself, and that was the first time I had met Mr. Mahoney. That was in—I wrote a letter shortly after that. It was January, 1954, I believe.

Mr. Gantt: Exhibit 37, please.

(Whereupon, document was handed to counsel by the Clerk.)

Q. (By Mr. Gantt): Mr. Robinson, I will hand you Plaintiff's Exhibit 37, previously admitted, and I ask you to state what those are?

A. This is an invoice from Pittsburgh Laboratory to W. R. Grace for the services rendered.

Q. Where was that invoice prepared?

A. In Pittsburgh.

Q. Did you see it prior to its being sent out?

A. No.

Q. The billing, in other words, was done by your Pittsburgh head office—main office?

A. That is right.

Q. And not by the San Francisco office?

A. No.

Q. And not by the Seattle office? A. No.

Q. How is the billing prepared—the [912] invoice—prepared? From what is it made up?

A. The Accounting Department.

(Testimony of Parker M. Robinson.)

Mr. Morrow: Just a minute.

Q. (By Mr. Gantt, continuing): If you know?

Mr. Morrow: I think it should be qualified. He indicated it wasn't under his supervision. If prepared at Pittsburgh, I don't see how he could know how this was prepared.

The Court: I don't know whether he does or not.

Q. (By Mr. Gantt, continuing): Do you know how this invoice was prepared?

A. I know the information from which it was prepared, yes.

Q. What is the informatioin from which it was prepared?

A. We make out time cards for each man in our employ, and those time cards show the job number and the name of the company, the client for whom that work is being done. Therefore, every bit of time and expense of that man going to and from the job is shown on those time cards, and it is from that that they get the time and expense and the analysis, if we did it in our own [913] office.

It would be based on our reports—the Accounting Department would pick up these various reports and then bill for each one at a standard price.

If it is done by an outside laboratory, such as was the case here, they would pick up that information from the bill which was rendered by the outside laboratory to the Pittsburgh office for the services rendered. That is how that bill was made up.

Q. Where was the chemical analysis done here?

(Testimony of Parker M. Robinson.)

A. It was originally intended that we should do it in San Francisco because of the fact that our Seattle office does not have a chemical laboratory. However, there were certain disadvantages to that, particularly from the Foundry's standpoint, that they would be delayed in getting the results; and it was requested that we arrange to have those samples analyzed in Seattle and that was done by making arrangements with the Northwest Laboratory.

Q. Mr. Robinson, did you ever meet Mr. C. G. Gips of the Grace and Company? A. Yes.

Q. When did you meet Mr. Gips first?

A. Well, our telephone information from Gips that came to our office through Mr. Clark was on May 16, 1952. [914]

Within a week or ten days after that, I paid a visit to Mr. Gips to become acquainted with him, and thanked him for the order, and, realizing that Grace and Company were a large exporting company, I explained to him what other types of service we might render to him on various things they were purchasing for foreign customers.

Q. Now, at the time of your visit to Mr. Gips, did he show you Plaintiff's Exhibit No. 1, being a letter of April 3, 1952, from Grace, Washington office, to Grace, San Francisco office? A. No.

The Court: That is No. 2?

Mr. Gantt: It is No. 1, your Honor.

Q. (By Mr. Gantt): And at the time of your visit with Mr. Gips, did Mr. Gips show you the

(Testimony of Parker M. Robinson.)

purchase order which is Exhibit No. 11, Grace's purchase order from the New Zealand Government?

A. Definitely no.

Q. And at the time of that visit with Mr. Gips, did he tell you that the billets were to be used for railroad—for locomotive parts? A. No.

Q. Or for coupler heads?

A. There was no discussion about the use of the [915] billets at all.

Mr. Gantt: That is all, Mr. Robinson.

The Court: Before you go on, did you say you met with Mr. Gips—when, Mr. Robinson?

The Witness: I can't say exactly. I would say it was within one week or ten days after the May 16th date.

Mr. Savage: If the Court please, I would like to cross-examine for Seattle Foundry in Pittsburgh versus Seattle Foundry, if I may.

The Court: All right. Do you wish to——

Mr. Morrow: Yes, I will develop my cross-examination.

### Cross-Examination

By Mr. Savage:

Q. Mr. Robinson, I believe you testified on direct examination that you have been a member of the American Society of Testing Materials since 1950; am I correct? A. That is correct.

Q. And that the Company had been a member for over 30 years? A. 50 years.

Q. 50 years. Now, at the time that you had

(Testimony of Parker M. Robinson.)

these [916] conversations with the representatives of Grace and Company, did you have the ASTM 17/29 specifications in the office?

A. I did not have the conversations personally with Mr. Gips of the Grace Company.

Q. Well, who had them—Mr. Clark?

A. Mr. Clark had the conversations with him.

Q. At that time did you have the specifications in the office?      A. Yes.

Q. Now, would it be similar to Exhibit Number 56, Plaintiff's Exhibit 56, or would it be a later or older edition?

A. 1939 edition was the one that we had.

Q. Now, then, does the ASTM issue pamphlets keeping these volumes up to date from time to time?

A. Yes.

Q. Or do they make out new volumes?

A. They do both.

Q. They do both?

A. If a tentative standard is made in between the three-year period, that is distributed, and then when the new volume comes out, that is included in the new volume.

Q. Now, then, would you say that your [917] office contained all the volumes which brought ASTM specifications up to date?

A. Yes, I think it did.

Q. In 1952, I mean?      A. I think it would.

Q. Now, is it a practice to have your branches—require them to have copies of the ASTM specifications, as well as any pamphlets or a later volume?

(Testimony of Parker M. Robinson.)

A. We are a branch. We are not the main office.

Q. Well, then, would you say that the Seattle office had the specifications?

A. I have no idea. I don't know anything about the Seattle office.

Q. Is each branch a law unto itself?

A. Each branch has certain kinds of work which they do, and which requires that they keep certain specifications, or have equipment to do it.

Now, for instance, we do a lot of work in San Francisco which Seattle is not equipped to do. There are various things in Pittsburgh that they can do and which we cannot do in San Francisco, so that each office has its own bailiwick and things that they do in that.

Q. Will you tell the Court what percentage of your work is predicated upon ASTM specifications, and what [918] is not, roughly speaking?

A. That would be a very hard thing to answer. Certainly a great deal of it is predicated upon ASTM specifications, but on the other hand we do a great deal of work also on government specifications.

In some cases, without any specifications at all, just the specifications of the particular purchaser. For instance, I will just give you a rough example.

We will sample and analyze a lot of iron ore going to Japan. Now, the customer in this country, who in this case is the supplier, gives us the requirements of what he wants to have done, and he tells us, "You shall sample as it goes on the ship, you shall take

(Testimony of Parker M. Robinson.)

that sample and make certain analyses from it and report your results.”

That has nothing to do with ASTM, and, of course, a great many others are similar to that. ASTM is not the only source of specifications.

Q. I understand that. I am asking you if a large percentage of your work is not based upon that, generally speaking?

A. A large percentage is, but I wouldn't say whether it was a majority of it.

Q. Would that answer apply to other branches, or are other branches relying on it less? [919]

A. It would vary.

Q. It would vary. Now, with reference to Defendant's Exhibit A-1, I believe you testified those were the notes of Mr. Clark?

A. That is correct.

Q. And at that time did you have any contact with the representatives of Grace and Company insofar as the terms of the agreement was between Pittsburgh and Grace?

A. I did not, personally, no.

Q. All you testified was as to the notes of Mr. Clark? A. That is right.

Q. Now, when was the first time it came to your knowledge, other than through these notes, that the Seattle office was to inspect in accordance with the ASTM specifications 200 tons cast steel billets?

A. I just don't get the meaning of that. I got information from Mr. Clark verbally that he had had this telephone order from Mr. Gips.

(Testimony of Parker M. Robinson.)

Q. And who passed it on to the Seattle office?

A. Mr. Clark. He passed it on by telephone and by letter.

Q. I have a letter here, A-6, signed by yourself. You signed that letter?

A. That is right. [920]

Q. That is dated what date? A. May 21st.

Q. And I am handing you A-7. Is that the inter-officer order which was sent at that time?

A. Yes, this is our internal work order that we send copies to Pittsburgh and we send copies to the branch which is going to do the work.

Q. Then at the time you sent out your letter of May 21st, A-6, Defendant's, with the order enclosed, you then had no personal contact with the arrangements so far as the contract between Grace and Pittsburgh was concerned?

A. No, I had no personal contact.

Q. However, you did testify when this letter and the order with it went to the Seattle office that the 200 tons cast steel—now, correct me if I am wrong—indicated upon its face because it referred to cast steel that the ASTM specification 17/29 did not refer to rolled or forged billets, is that correct?

A. You mean that I testified to that?

Q. You testified, yes; that is my understanding. That this, the key information as contained in this order to the Seattle office was cast steel billets?

A. That is correct.

Q. And that in itself indicated that the [921]

(Testimony of Parker M. Robinson.)

ASTM 17/29 specification was not to require forged or rolled billets; is that correct?

A. I wouldn't say that that was the only factor that indicated it.

We had already notified our Seattle office——

Q. (Interposing): When?

A. (Continuing):—— by phone call by Mr. Clark.

Q. At what time? A. On the 16th.

Q. On the 16th?

A. And he followed it with a letter of the 17th, giving them——

Q. (Interposing): What was the conversation; do you know what the conversation was?

A. I don't know; you will have to ask Mr. Clark that.

Q. All right. It was then followed with a letter. Go ahead.

I gather from what you said in testifying as an expert and as a non-expert—correct me if I am wrong, I am a little fuzzy—that because the order and the letters and the notes of Mr. Clark referred to cast steel billets that that reference in itself excluded forgings or rolled billets; am I correct in that?

A. I would say that the whole thing has got to be [922] taken together.

Remember this: that this internal order of ours is to keep our records straight. There is a number, S.F. 5799, given to this particular job, so that our Pittsburgh Accounting Department and the Seattle office

(Testimony of Parker M. Robinson.)

who make out the time cards against it would show, and it can all be tied in with that one order number.

Q. Well, let me ask you——

A. (Interposing): That is the prime purpose. It is internal only.

Q. Let me ask you this: In this internal order it refers to 200 tons cast steel?

A. That is right.

Q. Does that, under the specification therein set forth, require rolled or forged billets? A. No.

Q. Why doesn't it?

A. Because our instructions from the client were that they were to be cast steel billets.

Q. And did this pass on the information to your Seattle office?

A. Yes, it did, and not only that, but previous telephone conversations and letters did.

Q. Well, then, did the previous conversations and letters ahead of that order exclude the rolled or [923] forged, or does this order itself?

A. Both.

Q. How? Tell me how. Explain to me.

A. You ask Mr. Clark what he told Mr. Johnson on the phone. I don't know anything about Mr. Clark's conversation.

Well, he will be on the stand here.

Q. I know, but you tell me.

The Court: Mr. Robinson, you should attempt to answer the question as best you can. If you cannot, you can so state.

The Witness: Okay.

(Testimony of Parker M. Robinson.)

A. I did not hear Mr. Clark give that phone instruction to Seattle.

Q. (By Mr. Savage): Now, I might be wrong about this, but I understood you to testify that when these letters and orders were sent to the Seattle office, that the order itself, referring to 200 cast steel, was sufficient to inform them that they were not to inspect rolled or forged steel; am I wrong?

A. I think that that would be a reasonably correct assumption.

Q. Reasonably correct? A. Yes. [924]

Q. So that now, let me ask you, then: Did you at any time prior to this letter of May 21st, which you signed, Defendant's Exhibit A-6, and the order accompanying it, have any information covering the contract between Grace and Foundry? A. No.

Q. Had anybody informed you orally of what that contract was? A. Not me.

Q. Had anybody written you a letter or showed you a copy of any contract before that letter went out? A. No.

Q. You knew nothing about it at all?

A. Nothing.

Q. Now, as an expert, if at the Seattle Foundry they endeavored, after you had given the instructions to the Seattle office, to deliver to Pittsburgh rolled or forged steel billets, would they have been acceptable under your instructions to your Seattle office?

A. We would have immediately gone back to the

(Testimony of Parker M. Robinson.)

source of our information, Mr. Gips, and asked for further instructions.

Q. Let's suppose you couldn't go back, and answer the question: Would you accept them under that order?      A. No. [925]

Q. Therefore, your order of 200 tons cast steel billets was given before you ever knew anything about the contents of any agreement between Grace and Seattle Foundry—correct?

A. Except for one thing.

Q. What one thing?

A. Mr. Clark in his telephone conversation with Mr. Gips was told that cast steel billets were ordered, and Mr. Clark told that to me.

Q. But outside of that, neither you or Mr. Clark had a copy of the contract?      A. No.

Q. And were not informed of the details of the contract?      A. No.

Q. Now, then, would you take Exhibit 56, there, and read to me paragraph 3?

A. Paragraph 3 states that:

“Billets shall be purchased as semi-finished, rolled or forged material.”

Q. Now, as an expert if you desired to have your Seattle office inspect cast steel billets according to ASTM 17/29, wouldn't it have been simpler to have said, “Inspect according to ASTM 17/29 excepting therefrom paragraphs so-and-so and so-and-so”?

A. No, I don't think that was the simplest way to do it. The simplest way to do it was to say, “Inspect in accordance with the chemical speci-

(Testimony of Parker M. Robinson.)

fications of A-17/29 and inspect for visual surface defects, and for the size," of course. The size is not mentioned in the ASTM A-17/29 specifications. That is something which the customer gives us. They have ordered certain sizes. "See that we get them. Inspect to see that they are that size."

Q. Now, did you ever inquire of your Seattle office whether they had the specification ASTM A-17/29?

A. Mr. Clark had the telephone conversation with the Seattle office. I did not hear that conversation.

Q. Do you know now whether at that time they did have a volume containing the specification ASTM?

A. I know now, according to what I have heard, that they did not have in their office a copy of that specification.

Q. Did they ever make demand upon you for the specification to be sent from the San Francisco office to Seattle?      A. Not to my knowledge.

Q. As a matter of fact, they didn't need it when they were only going to inspect cast steel billets, did they?

A. That is the way we felt, that they didn't need [927] it because we gave them all the parts of the specifications that they needed.

Q. And if they didn't have a copy, would they from memory know what all the paragraphs from 1 to 15 were?

A. Most certainly not. There are hundreds and

(Testimony of Parker M. Robinson.)

maybe thousands of ASTM specifications, and unless you are currently using one particular specification, you certainly cannot remember what the paragraphs are, and what they say.

Q. And no inquiry, so far as you know, was made back from the Seattle office asking for the complete specifications?

A. Not that I know of.

Q. I believe you testified that as to the letter of May 16, 1952, from Grace and Company to Seattle Foundry you had never seen that until after the dispute arose; is that correct?

A. No, I had never seen it.

Mr. Savage: That is all. [928]

\* \* \*

### Cross-Examination

By Mr. Morrow:

Q. Mr. Robinson, you have been the manager of the Pittsburgh Testing Laboratory in San Francisco since 1946, haven't you?

A. That is right. [930]

Q. And you are a graduate and hold college degrees—Bachelor of Science degree in Mechanical Engineering? A. Yes.

Q. And you took post-graduate work at Yale in Mechanical Engineering? A. That is right.

Q. And you are a licensed engineer in California, Oregon and Utah? A. That is right.

Q. You are also a member of the A.S.M.E. Society?

(Testimony of Parker M. Robinson.)

A. American Society of Mechanical Engineers.

Q. Mechanical Engineers; and you are a member of the Society of Naval Architects and the Marine Society, is that it?      A. Yes, that is correct.

Q. Now, what are those societies?

A. Now, the American Society of Mechanical Engineers is as its name implies.

Q. Is that the largest? Have you finished?

A. Well, it is the mechanical engineers.

Q. Is that the largest society of mechanical engineers and to which most of the important mechanical engineers belong?

A. It is the only society of mechanical engineers that I know of. [931]

Q. I see.

A. There are certain branches that might be called mechanical engineers in general; petroleum is mechanical engineering, but it has become such a large unit that they now have their own association. The same is true of industrial engineers. They are mechanical engineers but they have become so numerous that they have had their own association.

Q. How long since you practiced the art of mechanical engineering?

A. I have been practicing right up to the present time.

Q. You practice it in your present profession, do you?      A. Yes.

Q. Now, you are also a member of the American Concrete Institute, is that correct?

A. That is correct.

(Testimony of Parker M. Robinson.)

Q. Are you an active member in that association?

A. I am not on any committees, no.

Q. Well, are you active in attending the meetings?

A. Not very. You see, they have committee meetings, and then maybe a yearly convention. They don't have any local meetings.

Q. Do you attend—pardon me. [932]

A. As other societies do.

Q. Do you attend meetings of these various societies which you belong to? A. Yes.

Q. Regularly? A. Not regularly, no.

Q. Now, you state that you have been a member of the ASTM since 1950. What kind of a member are you with ASTM?

A. Primarily to get all of the information that we need to conduct our business.

Q. Do you know whether Mr. Johnson of the Seattle office is a member of the ASTM?

A. I do not know that.

Q. Are you a member of any committees of the American Society for Testing Materials?

A. No.

Q. You are not then specifically a member of the A-1 Committee on Metals, are you?

A. No, we have a man from the Pittsburgh office who is on that committee.

Q. Do you belong to any metallurgical societies?

A. No.

Q. Do you profess to be especially skilled in metallurgy? [933] A. No.

(Testimony of Parker M. Robinson.)

Q. Do you profess to be sufficiently proficient in metals and metallurgy to define terms with respect to metal?

A. Yes, because I have used metals in engineering, the engineering profession, and I would have to know the terms, and I have been through many steel mills and many foundries and many rolling mills and forge shops, so that I know in general how materials are used, and the general nomenclature.

Q. I see. Then, when you read the definition from Henderson's Metallurgical Dictionary, it wasn't necessary, was it, for you to refer to that in order to obtain a definition of the word "billet"?

A. No. My idea of a billet, as I knew it before I looked in there was very similar, but he put it in better words than I would.

Q. Yes; and, by the way, there is no definition in Henderson's in respect to a cast steel billet?

That term, or combination of terms, is not defined in Henderson, is it?

A. Yes, the very first definition is a casting.

Q. All right. Would you then—let's refer to that.

"Castings: Metallic objects formed by [934] pouring molten metal into a mold, as in gravity casting, or by forcing highly plastic metal into a die, as in pressure casting. Castings are generally classified as ferrous or non-ferrous."

A. That is correct.

(Testimony of Parker M. Robinson.)

Q. "They are further classified as to the type of mold used as, for example, permanent mold, sand mold, etc., and also as to the special processes used, such as die casting, precision casting, etc."

Now, is it your contention, Mr. Robinson, that under this term "Casting" is included a definition of the term "cast steel billets"?

A. A billet can be cast just the same as any other kind of a casting.

Q. I understand that is your contention, but that doesn't answer my question.

The question is, or was, first:

Is there a definition of the combination of terms in Henderson's Metallurgical Dictionary, "cast steel billets," and your answer was, "Yes, it is under the term 'castings,'" if I recall your testimony correctly.

Now, I am asking you whether you are quite certain, after I read the definition, that this definition refers equally to the term "cast steel billets"?

Mr. Gantt: If the Court please, I believe [935] counsel has misinterpreted what the witness said.

He asked the witness—counsel asked the witness—if a cast steel billet is included under the definition of the word "billet," and Mr. Robinson said the first definition under the word "billet" is the definition of a casting or refers to a casting, as it does in the definition of the word "billet" in Henderson's, which Mr. Robinson read on direct examination.

The Court: The witness, I assume, can follow the

(Testimony of Parker M. Robinson.)

questions, and he may point out such differences if he thinks they are material.

Mr. Morrow: Yes.

Q. (By Mr. Morrow): Now, I don't know—I don't recall whether there was a question before you or not, presently, Mr. Robinson.

The Court: I believe there is a question.

A. Well, maybe I can——

The Court (Interposing): Just a moment, Mr. Robinson. We will see if there is a question.

(Whereupon, the following was read by the reporter:)

“Q. I understand that is your contention, but that doesn't answer my question. The questions is, or was, first: [936]

“Is there a definition of the combination of terms in Henderson's Metallurgical Dictionary, 'cast steel billets,' and your answer was, 'Yes, it is under the term "casting,"' if I recall your testimony correctly.

“Now, I am asking you whether you are quite certain, after I read the definition, that this definition refers equally to the term 'cast steel billets'?”

The Court: Do you understand the question, Mr. Robinson?

The Witness: Yes, I understand the question and I think I can answer it this way:

A. (Continuing): The term “casting” is a generic term used whenever you pour molten metal into a mold, and a term “billet,” refers to a certain

(Testimony of Parker M. Robinson.)

general size and shape of a piece of metal. Therefore, a cast steel billet is a billet that is of a certain shape and size which has been cast by pouring molten metal into a mold.

Does that make myself clear?

Q. (By Mr. Morrow): Well, I don't know whether you have answered the question or not.

Now, let me put the next question to you, which can be answered either yes or no. [937]

Are the terms "cast steel billets" defined in Henderson's Metallurgical Dictionary?

A. No.

Q. They are not? A. Not as such.

Q. Now, the term——

A. (Interposing): May I say one more thing there?

Q. Yes, you may.

A. You will find it in the technical literature, the name, "cast steel billet."

Q. But you are unable to state where?

A. Yes, I could; I could definitely state where. If you refer to the "Iron Age," August 19, 1948, you will see a complete description of "cast steel billets" made by continuous casting process which has been developed by the Pittsburgh Steel Corporation and the Babcock and Wilcox Boiler Company.

Q. Well, that may be so. Previous information from your superiors in answer to interrogatories was that there was no such definition in any techni-

(Testimony of Parker M. Robinson.)

cal work, and that was all I was going on, Mr. Robinson.

A. Well, I can show it to you, if you want to see it.

Q. Yes. Now, Mr. Robinson, the term "casting," as defined in the Metallurgical Dictionary by Henderson [938] refers to castings, generically, classified as ferrous or non-ferrous, and I would like to ask you if you recognize the difference in the ferrous and non-ferrous field of metallurgy? A. Yes.

Q. So that in defining a billet is it not necessary, Mr. Robinson, for you to first of all consider whether or not you are dealing in the ferrous or non-ferrous field?

A. That is correct. It is correct for this reason: that a billet in the non-ferrous field is usually a smaller size than in the ferrous field.

Q. Well, isn't it true, Mr. Robinson, that the definition one of a billet, given of a billet from Henderson's Metallurgical Dictionary, "any solid metal casting of cylindrical, square or rectangular shape," refers to the non-ferrous industry?

A. No, it refers to both.

Q. All right; isn't it true, then, that (2) defining a billet in Henderson's Metallurgical Dictionary is as follows:

"A rectangular semi-finished rolled ingot with cross-section of from four to thirty-six square inches, having a width less than twice its thickness" refers to the ferrous industry? [939]

A. That is right.

(Testimony of Parker M. Robinson.)

Q. So isn't it reasonable to conclude that the definition, the second definition of a billet is the one which is to be used when you are considering the term billet in connection with the ferrous industry?

A. No.

Q. Are you familiar with the Metals Handbook published by the American Society for Metals?

A. Yes.

Q. Are you familiar with the fact that in the definition of billet there there is a distinction between the ferrous and non-ferrous industry?

A. Yes.

Q. And isn't it true that in the Metals Handbook definition for billet it refers to a rolled material?

A. Well, I would have to see it to know what you are talking about.

Q. Do you mind if I come up here?

The Court: Sure; sure.

Q. (By Mr. Morrow): In the definition—I am referring you to the Kent's Handbook, 1948 edition of American Society for Metals—now under the definition, the first definition of billet, what are the words that follow? A. Well—— [940]

Q. (Interposing): Just answer the question.

The non-ferrous metallurgy—isn't that correct?

A. You are referring to a billet in the non-ferrous, that is what it applies to here.

Q. All right; now, will you read the billet in the non-ferrous metallurgy definition?

(Testimony of Parker M. Robinson.)

A. Get your finger out of the way so that I can see.

Q. I am sorry.

A. Non-ferrous metallurgy, one, this is the definition of a billet in the non-ferrous—that means brass, bronze, copper.

“A section of ingot hot-worked by hot forging, rolling or extrusion.”

“2. A casting suitable for rolling or extrusion.” So that even in your non-ferrous, you have both the casting and the rolled or forged product named a billet.

Q. And that was your testimony in connection with Henderson's Handbook, that the first definition could refer to the non-ferrous metallurgy?

A. No, I said it could refer to both.

Q. All right.

A. Because it does not limit it. In here it is limited because it says it is non-ferrous. This limits [941] it to non-ferrous, whereas Henderson made a general statement that his first definition is that it is a casting, and he didn't say whether it is ferrous or non-ferrous, so that it applies to both.

Q. Now, will you refer to the definition of billet in the Metals Handbook, with respect to the ferrous industry; and what does it say?

A. It doesn't say.

Q. Well, what does it say?

A. There is nothing in here regarding ferrous industry.

Q. I call your attention—I can understand why

(Testimony of Parker M. Robinson.)

I was trying to keep my hand on it—here is the first word, billet, here is the next word, billet, and opposite that it says “ferrous metallurgy,” does it not? A. You are right.

Q. And “see bloom.” A. “See bloom.”

Q. That is for the ferrous metallurgy, is it not?

A. In this particular catalogue it is.

Q. Yes. A. This particularly dictionary.

Q. Now, how is a bloom defined in the Metals Handbook?

A. “Bloom, slab or billet, in ferrous [942] metallurgy semi-finished products hot-rolled from ingots and rectangular in cross-section with rounded corners. The chief differences are in the cross-sectional area.”

They mean by that, between a bloom, a slab and a billet.

“In ratio to width, to thickness, and in the intended uses. The American Iron and Steel Institute, Steel Products Manual, Section 2, classifies general usage thus.”

And it gives particular sizes of a bloom and a billet and a slab.

Q. Thank you. Now, Mr. Robinson, will you give me your definition of a cast steel billet?

A. A cast steel billet is a billet of a size specified which is cast by pouring hot molten metal into a mold and is used by forge shops for further processing by forging operations, or it could be machined from its original casting dimensions into a product, final product.

(Testimony of Parker M. Robinson.)

Q. Do you recognize this definition of a cast steel billet, that the term billet refers to a semi-finished forged or rolled material?

A. That is one definition of it, yes.

Q. Well, that is usually the definition used by a producer of steel billets, is it not, by a method of pouring steel into ingots and reducing the ingots in size [943] by rolling or forging?

A. I would say this, that the largest number of tons of ingots—I mean billets—is from rolling mill operations which, of course, uses the ingot to start with.

The reason for that is that that is the cheapest way to produce ingots. However, in cases of shortage they are produced in other ways.

Q. Then you agree, do you, Mr. Robinson, that in the greatest number of instances a manufacturer of steel billets uses the term “billet” in describing a product which is manufactured by pouring steel into a cast-iron mold and reducing it in size by rolling or forging to produce the end product?

A. Well, I have said that that is the biggest tonnage, yes.

Q. Well, then, that is the way the term is used in the industry, isn't it?

A. Oh, no. The industry also recognized forged billets. It also recognizes cast billets. You will see that in the technical literature quite frequently.

Q. Do I understand now that so far as terminology is concerned and your understanding that a cast steel billet is a product made into the size and

(Testimony of Parker M. Robinson.)

shape of a billet and which can be rolled or forged?

A. That is correct. [944]

Q. Let me ask you: is a billet cast metal or steel?

A. Is a billet——

Q. (Interposing): Is a billet cast steel?

A. Well, it depends on what billet you are talking about.

Q. Well, any billet?

A. Well, sure.

Q. It is cast steel?

A. Yes.

Q. That is your understanding, that a billet is cast steel, is that correct?

A. That is one kind of a billet.

Q. How would you define the term “steel billet” without the term “cast”?

A. That would mean it could either be rolled, forged or cast.

Q. In other words, a steel billet, as used in the ferrous metallurgical field, is a semi-finished steel product manufactured by rolling or forging an ingot?

A. I don't recognize it as such.

Q. You don't recognize it as such?

A. Not a billet as to that restricted definition, no. [945]

Q. But that is one definition of a steel billet, isn't it?

A. That is one definition, yes.

Q. Well, Mr. Robinson, what is the definition of a steel billet as used by the American Society of Testing Materials?

A. Do you refer to this particular specification, A-17?

Q. No, I don't refer to that one in particular.

(Testimony of Parker M. Robinson.)

I refer to the definition as determined by the American Society of Testing Materials committee, A-1, on Steel.

A. I am not familiar with that definition.

Q. Is it contained in ASTM A-17/29, which you have before you, Plaintiff's Exhibit 56?

A. Well, it says here: "Billets: The term billet as used in this specification is to include bloom, billets, and slabs," and then in number three, "Billets shall be purchased as semi-finished, rolled or forged material."

Q. Now, I believe in your testimony that you said that you had present in your office at the time that the Grace order was placed the specifications and the books put out by the American Society for Testing Materials—is that correct?

A. That is correct. [946]

Q. So that at that time you had in your records and in your library the ASTM designation A-273-44, covering specifications for carbon steel, blooms, billets and slabs for forging; is that correct?

A. Yes, that is the specification which superseded this, so far as carbon steel billets is concerned.

A-274 superseded this specification so far as alloy steel billets is concerned.

Q. Now, will you tell me with reference to Plaintiff's Exhibit 62, which is in evidence and which is a carbon copy of the ASTM A-273-44 T specifications, what the American Society for Testing Materials says with respect to carbon steel billets or what the definition is, I should say.

(Testimony of Parker M. Robinson.)

A. Well, let's see:

“Scope. These specifications cover carbon steel semi-finished rolled or forged blooms, billets and slabs for reforging.”

Q. That is (a). What is the definition under (b)?

A. (b) reads:

“Blooms, billets and slabs are semi-finished steel products hot-rolled or forged from ingots to approximate cross-sectional dimensions. Blooms and billets may be square, round or rectangular in section; slabs are rectangular.” [947]

Q. You need not read any more. The rest refers to sizes.

I will refer you to Plaintiff's Exhibit 63, which has been admitted in evidence as a photostatic copy of A-273-/52 T.

By the way, 52 T refers to the 1952 tentative——

A. (Interposing): It means that it has been tentatively set as in 1952. It hasn't been determined as a fixed specification yet. It is just tentative.

Q. Now, would you compare the definition as set forth in Plaintiff's Exhibit 63 with the definition in Plaintiff's Exhibit 62?

That is paragraph 1.(b); and state whether or not the definition of a carbon steel billet is the same in both exhibits?

A. They seem to be the same.

Q. They are the same; is the United States Steel Company one of the larger manufacturers of steel products?

A. Yes.

(Testimony of Parker M. Robinson.)

Q. Is that company a reliable source of information in respect to the manufacture of steel billets?

A. Yes, particularly the steel billets which they manufacture which are all rolled. They do not manufacture any cast steel billets, because that is [948] something which the smaller forge shops want and buy at a time when they can't get rolled steel billets.

Q. Do you agree, Mr. Robinson, that the United States Steel Corporation, in setting forth in their treatise on the "Making, Shaping and Treating of Steel, Sixth Edition," apparently published in 1951, sets forth in respect to the production of rolling of steel ingots into blooms, slabs and billets a method of manufacture consistent with the definition of a steel billet as follows:

That a steel billet is a semi-finished, rolled or forged product manufactured from a—reduced from an ingot larger in size?

A. Yes, that is correct.

Q. You concede that the United States Steel employs the term "steel billet" in that connection, do you?

A. Yes, yes; that is because they make them from that process.

Q. Mr. Robinson, you have given testimony in connection with Defendant's Exhibit A-1, which you have identified as Mr. Clark's notes, and I will hand it to you here, so that you will have it before you.

Now, do I understand your testimony to be that

(Testimony of Parker M. Robinson.)

Mr. Clark took these notes, and told you that [949] this was the information given him by Mr. Gips of Grace and Company?

A. That is correct, by telephone.

Q. By the telephone? A. Yes.

Q. In referring you to Defendant's Exhibit A-3, do I understand that this Exhibit A-3 is an inter-office communication which was sent to your Seattle office by Mr. Clark in accordance with the information he had received on the phone from Mr. Gips?

A. That is right.

The Court: Is that A-6?

The Witness: Exhibit Number 1, it says.

The Court: On the side there?

Mr. Morrow: A-3, I think it is.

The Witness: Oh, A-3; yes, Defendant's Exhibit A-3.

Q. (By Mr. Morrow): And, do I understand that following that you yourself—and following information you had received from Mr. Clark—you wrote to your Seattle office, Defendant's Exhibit A-6?

This is A-6—your letter of transmittal.

A. Yes.

Mr. Morrow: I wish to read this to the [950] Court, your Honor. It wasn't read before. [951]

\* \* \*

Q. That is the letter you wrote? A. Yes.

Q. And with that you enclosed your formal inspection order, which is Defendant's Exhibit A-7,

(Testimony of Parker M. Robinson.)

did you?           A. That is correct.

Q. And this is the formal order which you included with that exhibit?           A. That is right.

Q. Mr. Robinson, there is a vast difference, is there not, in your own estimation, between what you described as a cast steel billet and a steel billet which complies with ASTM A-17/29 specification?

A. Would you put that question again? I didn't quite get it.

Mr. Morrow: Yes. Will you listen to the reporter? May he read it?

The Court: The reporter will read the question.

(Whereupon, the following was read by the reporter: "Q. Mr. Robinson, there is a vast difference, is there not, in your estimation, between what you [952] described as a cast steel billet and a steel billet which complies with ASTM A-17/29 specifications?")

A. (Continuing): A cast steel billet is certainly not a forged or rolled billet.

Q. (By Mr. Morrow): Yes. One product is more refined than the other, isn't it?

A. Refined in what way?

Q. By forging or rolling?

A. The chemical constituents could be the same.

Q. Yes.

A. And since it is presumed to be a semi-finished product, it is assumed that it is to be further worked.

Q. Yes.

(Testimony of Parker M. Robinson.)

A. In one way or another, by the purchaser; and in that case they would have the same material.

Q. Well, do I understand, then, from what you have just said, and your previous testimony, that there is little difference in the end product between what you term a cast steel billet and a steel manufactured as per the ASTM A-17/29 specifications?

A. I say this: That you can take a cast steel billet and further roll it and forge it to whatever—to the shape you are going to make it finally, and then [953] there will be no difference whether you start it with a rolled or forged billet, or whether you start it with a cast billet, because you start with a casting to start with, with your ingot.

Q. Yes.

A. So that you have started with cast material in either case.

Q. Yes.

A. So, if you forge it and roll it from the 4 by 9½ shape down to something smaller, you have got practically the same kind of material as if you had forged it down from the size of an ingot.

Q. So then in your estimation there is practically no difference in the finished product between a cast steel billet and a billet conforming to ASTM A-17/29 specifications?

A. Well, now, I am talking about the final product made from a cast billet after it has been further forged or rolled.

Q. I see.

(Testimony of Parker M. Robinson.)

A. Then I say that that is the same material.

Q. Well, we are talking about two different things.

A. I tried to make it clear.

Q. I am talking about the term "cast steel billet" as it was manufactured in this case by the Foundry without [954] any subsequent rolling and forging.

Now, what I am trying to ask you is: Is there any material difference between that product and a product which would be manufactured according to the specification ASTM A-17/29?

A. There would be some difference in the grain structure, but, as I say, that is considered right in the specification as a semi-finished product which is still further finished by further working, and when you do further work it, you have got the same grain structure.

Q. I see. Then I believe in your testimony you said that in manufacturing a cast steel billet that paragraph 3—do you have Plaintiff's Exhibit 56 before you?

A. Yes.

Q. Would not apply, is that correct?

A. That is correct.

Q. And I believe you said that paragraph 4 would apply?

A. Yes. That is open hearth or electric furnace and, therefore, that would apply.

Q. And paragraph 5 does not apply?

A. No.

Q. And paragraph 9(a) you say did not apply?

(Testimony of Parker M. Robinson.)

A. No, that isn't necessary. That is the check analysis by drilling the billets themselves. [955]

Q. Well, now paragraph 3 which you say does not apply in the manufacture of a cast steel billet, doesn't apply, as I understand it, because of the definition there that billets shall be purchased as semi-finished rolled or forged material, is that correct?

A. My answer to that is that it doesn't apply because the specification given to us by the purchaser was that it shall be cast steel billets. Therefore it can't be rolled or forged. That wouldn't apply.

Q. And in connection with paragraph 5, which provides that a sufficient discard shall be made from each ingot to secure freedom from injurious piping and undue segregation, you say that wouldn't apply to the manufacture of cast steel billets?

A. No. Do you want me to give you the reason?

Q. Yes; that would be fine.

A. Discard or cropping is only done if an ingot is rolled down to a smaller size. It is never done in the ingot stage in spite of the other experts that have been in this chair, because some ingots run up to 40 or 50 tons apiece, and might have a cross-sectional area of 2 by 2 and even 3 by 3; and it is conceivable that you might cut that ingot in any economical manner. To cut off the piping, if they did, you would lose a lot of good metal because the piping is in the center. Therefore, cropping [956] is done after that ingot has gone through the rolls

(Testimony of Parker M. Robinson.)

and become a bloom or a billet. Then cropping is done. It is expressed as being from the top end of the ingot. That means it is taken—the discard is cut off the billet or bloom that was at the top end of the ingot because it is where the piping would be.

Q. I see. In this case that couldn't apply, if I understand your testimony, Mr. Robinson, because the so-called billets were poured flat in sand molds?

A. That is right.

Q. And you couldn't cut off the top?

A. You wouldn't cut it off of the casting anyway.

Q. No. Now, in paragraph 6, your testimony was that that did not apply, and that provides that unless otherwise specified the billets shall be made from ingots at least three times the cross-sectional area of the billet, and——

A. (Interposing): That means——

Q. (Interposing): Let me ask the question, will you, sir?

A. Yes.

Q. That particular specification, as I understand your testimony, would not apply because in the casting process you cast according to the required size only?

A. The very wording of it, I think, will answer you— [957] “unless otherwise specified,” and in this case it was specified that they be poured to a certain size.

Q. I see. Well, then, suppose, Mr. Robinson, that the order—you had any order to make an inspec-

(Testimony of Parker M. Robinson.)

tion for steel billets as per the ASTM A-17/29 designation.

Let me ask you: Would it be important in the matter of inspection to see that the manufacturer of the product complied with paragraphs 3, 5 and 6?

A. You are asking me a hypothetical question which doesn't jibe with the facts of the way——

Q. (Interposing): I understand that.

A. (Continuing): ——we had received our order.

Q. I understand that, but will you answer the hypothetical question, Mr. Robinson?

A. Sure; if somebody says billets are to be made strictly in accordance with A-17/29, therefore they would have to be made in accordance with the specifications.

Q. Yes. Now, if you simply had an order to inspect material as per the ASTM specification A-17/29, then your inspection would consist of following the requirements of paragraphs 3, 5 and 6 of ASTM A-17/29?

A. Not if our client had ordered it from a Foundry. It couldn't be.

Q. All right. I am just asking you, [958] regardless of where the matter is ordered from, if it isn't true that if you had an order to inspect steel billets as per ASTM A-17/29, without any qualifications, then the inspection that would be required of you would be to see that paragraphs 3, 5 and 6 were carried out—isn't that true?

A. That is another hypothetical question, but——

Q. (Interposing): I know it is.

(Testimony of Parker M. Robinson.)

A. (Continuing): —which I don't think can be answered correctly without tying it in with the fact that the customer at the time they gave us the order said we were to inspect it at a Foundry.

The Court: Mr. Robinson?

The Witness: Yes?

The Court: These questions are put hypothetically, and you are to assume that. If your counsel thinks the question is objectionable, he will object.

The Witness: Okay.

The Court: So, if you will, answer the question as put, if you are able to, and your counsel will bring out any other matter.

The Witness: Will you read the question for me, and I will try to answer it.

The Court: The reporter will read the [959] question.

Mr. Gantt: Will the reporter read the question?

(Whereupon, the following was read by the reporter: "Q. All right. I am just asking you, regardless of where the matter is ordered from, if it isn't true that if you had an order to inspect steel billets as per ASTM A-17/29, without any qualifications, then the inspection that would be required of you would be to see that paragraphs 3, 5 and 6 were carried out—isn't that true?")

Mr. Gantt: Objection, your Honor, unless it is stated where the inspector is to make the inspection, at a warehouse, at a rolling mill, at a foundry, at

(Testimony of Parker M. Robinson.)

a forge shop, or wherever counsel has in mind. I don't think the question is complete as it is stated now.

The Court: Well, the objection is overruled.

Q. (By Mr. Morrow): Will you answer the question?

The Court: If he cannot answer the question of course he may so state.

A. If the billets were to be made in a steel mill and we were to inspect right through the mill, yes, we could follow that inspection—that [960] specification.

(Whereupon, there was a brief pause.)

Q. (By Mr. Morrow): Well, in other words, assuming that you had an order simply to make an inspection of steel billets as per ASTM A-17/29 specifications, that you could make such—not that you could make such——

Mr. Morrow: Strike that.

Q. (By Mr. Morrow continuing): That the important matter contained in that inspection would be a compliance with paragraphs 3, 5 and 6 of A-17?

A. I would have to qualify my answer as to whether it was done in a steel mill or not.

Q. All right.

A. If our inspection was done in a steel mill, yes; I will answer that yes.

Q. Very well. I will try to phrase my questions so that you will not be involved with where the inspection is made, Mr. Robinson.

(Testimony of Parker M. Robinson.)

In order for a product to comply with ASTM A-17/29, is it important that it be manufactured pursuant to the terms of the specifications and, in particular, paragraphs 3, 5 and 6?

A. Yes, sure.

Q. In other words, those are very [961] important parts of this specification, aren't they?

A. If they are to be rolled or forged billets.

Q. That is what it says, doesn't it?

A. That is what the specification says.

Q. Yes; so that if you had an order for castings or cast steel billets to conform insofar as possible, to ASTM A-17/29, it would be important to consider paragraphs 3, 5 and 6 in order to determine whether or not those would apply?

A. No, they are not applicable in that case.

Q. I know they are not, but that would be an important consideration for you, wouldn't it, as an inspecting institute?

A. If we were asked to—do I get this right—if we were asked to inspect cast steel billets?

Q. Yes.

A. No, it wouldn't apply at all, and we would so tell the client.

Q. It would not apply at all, and you would so tell the client?      A. Yes.

Q. You would have a fair understanding with your client as to what particular parts of this specification would be eliminated in the event of an inspection—in the event you had an order to inspect cast steel [962] billets with a specification ASTM

(Testimony of Parker M. Robinson.)

designation A-17/29, and it would be important, would it not, to have an understanding with your client or customer, as to what paragraph, what particular paragraphs of the specifications should apply or should not apply?

A. My answer to that is that the easiest way to do it, and the way we did do in this case, was to indicate which part of the specification was applicable, which in this case was the chemical constituents, the size, and the surface condition showing any defects. It is easier to do it that way than to say "eliminating paragraph so-and-so and so-and-so." That becomes quite confusing.

Q. Well, is it possible at all to use the ASTM A-17/29 in inspecting castings? A. Yes.

Q. It is? A. Yes.

Q. And I think you testified in respect to the visual inspection as to size and chemical composition only? A. That is right.

Q. So that if you do that, aren't you eliminating the most important phase and particulars of the specification, that it be a semi-finished rolled [963] or forged material?

A. That was in accordance with our customer's wishes.

Q. Yes, but aren't you eliminating that important phase? A. It is eliminating it, yes.

Q. And also you are eliminating the phase of the provision that it shall be—that sufficient discard shall be made from the ingot to secure freedom from injurious piping and segregation?

(Testimony of Parker M. Robinson.)

A. Don't forget we are not eliminating it. It was eliminated by our customer.

Q. But you still have to have an understanding with your client with respect to these important phases? A. We did.

Q. Is that true about paragraph 6, which requires the billets to be made from ingots of at least three times the cross-sectional area?

A. Not specifically, because it doesn't apply to a cast steel billet.

Q. Well, now, when you received this order from Mr. Clark, I assume it was of sufficient importance when he told you that this was an inspection for castings that you—that it registered in your mind; is that correct? [964] A. Yes.

Q. And when he told you that, you undoubtedly noted the difference between what was required under the ASTM A-17/29 and what would be required to inspect cast steel billets?

A. That is right.

Q. And so you necessarily made a qualification in your inspection when you forwarded your work order to Seattle?

A. We quoted them "cast steel billets" in that work order, yes.

Q. I see. Well, now, referring you to that work order, which I understand was prepared under your supervision——? A. Yes.

Q. The words "to inspect" refer to inspection of "800 steel billets" at Seattle Foundry?

A. Yes.

(Testimony of Parker M. Robinson.)

Q. That doesn't say "cast steel billets," does it, Mr. Robinson?

A. Steel is a generic term. They were steel billets.

Q. Yes.

A. Just the same as if you were asked to inspect 100 pies. It doesn't make any difference [965] whether they are apple or cherry.

Steel is a generic term, and they were steel billets.

Q. But the difference between castings and steel billets is as much difference as dough and bread?

A. Correct.

Q. Isn't one a finished and the other a raw product?

A. Neither are finished products; both are semi-finished, and that assumes they will be further worked by forging, machining, rolling, or some such thing as that.

Q. Now, under the title, "Specifications," you have ASTM A-17/29, Mr. Robinson, and it doesn't appear that there is any qualification in your order, does it?

A. This is an internal order to set up who the customer is, how it is to be reported, and to whom it it is to be reported, and copies go to our Pittsburgh office so that they will know how to bill it.

But it does not purport to give much information—the complete information is given to the inspector, if we are going to inspect it in our own office, or is given to the other district office, wherever they are

(Testimony of Parker M. Robinson.)

going to do the inspection. It isn't always given in [966] here; it is very seldom given in here.

Q. Did you read this order before it went out?

A. Yes, I did.

Q. Did you know——

A. (Interposing): Yes, I did.

Q. (Continuing): Did you know that the only reference to cast steel is in reference to the estimated quantity, 800 billets, 200 tons, cast steel?

A. That is right; that is right. That is what they were.

Q. Now, I will ask you the same question that Mr. Savage asked you:

Where in that order is there any qualification of these important paragraphs of ASTM A-17/29?

A. It doesn't purport to be in here.

Q. Then you agree it isn't in here?

A. It is in here implied, in that it is castings rather than forgings or rolled billets. It is certainly implied there.

Q. So that you left it to your inspector in Seattle to interpret this order, is that correct?

A. No, no; we didn't leave anything to the imagination of our inspector in Seattle.

Q. I see.

A. We instructed him by telephone and we [967] instructed him by letter exactly what to do.

Q. Now, Mr. Robinson, your testimony was that you received Mr. Clark's notes, and from that you made up your interoffice inspection order, which is A-7, which you have just seen; is that correct?

(Testimony of Parker M. Robinson.)

A. That is right.

Q. Now, do you have——

A. (Interposing): Let me qualify that to this extent: That I was interested in—the details that I was interested in was to see that we had the proper customer's name, that we had the proper reporting distribution, and invoices.

Now, the details of what was to be inspected, and so forth, came directly from Mr. Clark to our clerical department. My notes give all of that, and did not purport to.

Q. Well, as a matter of fact, you, I think, said you had no personal knowledge?

A. No, I hadn't.

Q. It is all hearsay?

A. That is right; that is right.

Q. Now, you did receive a letter from Mr. Gips, didn't you, dated May 20, 1952, Plaintiff's Exhibit Number 21? Do you have that before you?

A. No, but I know what it is. I did receive [968] it, yes.

Q. Preliminarily, Mr. Robinson, you spoke about the method in which your invoices were billed, and in that there is a reference to a letter, this letter of May 20, 1952.

Do you, in the conduct of your business, send the orders to your Pittsburgh office, or a copy of it?

A. Yes.

Q. And did you send this order here—Plaintiff's Exhibit 21—a copy of it to the Pittsburgh office?

(Testimony of Parker M. Robinson.)

A. I think we did, but I would have to look at the—it is the usual practice to do so.

Q. You probably did?

A. I think we probably did, yes. The reason for sending either a purchase order or a letter of authorization to our Pittsburgh accounting office is that they like to have that to have something to tie their invoice to, so that when those invoices go to the customer, those invoices can be processed much quicker than if they have to go through the organization and find the man who ordered it, and there might be considerable delay. That is the purpose of that.

Q. So then, as I understand your explanation, you treated Plaintiff's Exhibit 21—that is the letter of May 20, 1952——? [969]      A. Yes.

Q. —as the formal order which you had received from Grace, and sent it to your Pittsburgh office, and the reference there is to this particular order?

A. That is right; but we wouldn't consider that as a formal order because my reply of it, the next day, acknowledging receipt of that, very definitely states "in accordance with your verbal instructions."

Q. Well, I think the letter speaks for itself.

A. It speaks for itself, yes. Certainly everything was in that letter of authorization, all the details of the correspondence, the conversations, with Mr. Clark.

Q. That letter you have before you, however,

(Testimony of Parker M. Robinson.)

contained your instructions, did it not, from the Grace and Company?

The Court: You are referring to what letter now?

Mr. Morrow: Plaintiff's Exhibit 21.

The Court: I just want the record to be clear.

Q. (By Mr. Morrow continuing): Will you answer that?

A. Was your question that it contained all of the instructions?

Q. No, it contained instructions?

A. It contained instructions, yes. [970]

Q. Now, your answer, Plaintiff's Exhibit 22, dated May 21, 1952, I believe you said that acknowledged receipt of Grace's letter of May 20?

A. That is right.

Q. And at the bottom here, "Thanking you for this assignment, we remain very truly yours, Pittsburgh Testing Laboratory, Parker M. Robinson,"—thanking you for this assignment, that referred to Mr. Gips' letter of May 20, did it not?

A. It also referred to this verbal agreement here.

Q. Yes, I understand that.

A. The assignment covers the job.

Q. The assignment covers the job?

A. The assignment covers the job—whatever that was.

Q. Now, when you acknowledged that letter, as I understand it you had talked to Mr. Clark and you had referred to his notes.

(Testimony of Parker M. Robinson.)

Let me ask you, first of all, had you talked to Mr. Gips?      A. Not at that time.

Q. Didn't it strike you as being unusual that he would refer to you in his letter as having discussed the matter with you? [971]

A. Not necessarily. My name is so well known on reports and various other things as the District Manager that they very often refer things to me which have not come personally to my attention.

Q. Well, didn't it occur to you that Mr. Gips had not included there the qualification that the inspection was to be of cast steel billets?

A. It did, because he says it is to be done at the Seattle Foundry.

Q. That was your——

A. (Interposing): That was sufficient for me.

Q. That was sufficient for you?

A. To confirm the fact they would be cast steel, because that is all that could be furnished there.

Q. As I understand, then, the fact that Mr. Gips had indicated that the material was going to be manufactured at the Foundry, that was sufficient for you to assume that the product was cast steel billets?

A. Particularly after all the conversation on the telephone that Mr. Clark had with Mr. Gips.

Q. I assume if you made any notes about your important qualification that the material was to be cast steel billets that you would have included those in your notes, Mr. Robinson, is that correct?

(Testimony of Parker M. Robinson.)

A. Not necessarily. Steel billets is a [972] generic term and covers all kinds.

Q. Did you make any notes of your conversation with Mr. Clark?

A. He handed me his notes, and from those I made some notes of my own which were partly the basis of our internal work order.

Q. Referring you to Plaintiff's Exhibit 67, are those the notes you made from Mr. Clark's notes?

A. That is correct.

Q. Are you sure you made those notes from Mr. Clark's notes; are you?      A. Yes.

Q. Isn't it true, Mr. Robinson, that you transcribed those notes from Mr. Clark's conversation with Mr. Gips?

A. That is what he told me that it was conversation with Mr. Gips that led him to write his notes, and he turned them over to me.

Q. Why didn't you include in your notes the important qualification that this material was to be cast steel billets, instead of steel billets, as per ASTM A-17?

A. Here it is here. Grace's order to the Foundry.

Q. I see.

A. In other words, that was a foregone conclusion [973] at that time.

Q. I see.

A. By this, and then we had already forwarded the information to Seattle—our Seattle office—by telephone.

Q. Well, now, did you use Mr. Clark's notes or

(Testimony of Parker M. Robinson.)

your own notes when you wrote up the formal order for your Seattle office?

A. Mrs. King, who is in charge of our clerical work, wrote up that order, and she got it partly from here and partly from Mr. Clark, and as far as the number of reports and where they should go, I think that maybe she may have telephoned herself to find that out, because I don't remember getting it, and I don't know if Mr. Clark got it from Mr. Gips. Somebody must have found out how many reports they wanted.

Q. Well, do you recall in your deposition, given in San Francisco, on Thursday, August 12, 1954—I refer to page 51——

A. (Interposing): I can't recall it right now. Page 51.

Q. Not 51, particularly; but didn't you say that your notes were transcribed from Mr. Clark's conversations with Mr. Gips?

A. That is right. [974]

Q. Well, now, why didn't you include the qualification that the material was to be cast steel billets which were to be inspected, instead of steel billets according to ASTM A-17?

A. Both my notes and Mr. Clark's notes both went to Mrs. King to make up the order, and she undoubtedly talked to him as to details after I turned it over to her.

Q. I see.

A. In other words, although this was written

(Testimony of Parker M. Robinson.)

under my supervision it doesn't mean I went into all that detail.

Q. In your discussion with Mr. Clark, I assume that he told you that Foundry could only make castings of cast steel billets? A. That is right.

Q. And he told you that it had to be assumed that the order of Grace and Company was to inspect cast steel billets?

A. No, he told me—he told me he had so advised Mr. Gips of Grace and Company.

Q. Well, as a matter of fact, you have indicated in your testimony, Mr. Robinson, that because it was to be made at the Foundry that you assumed—that conveyed to you the information that the inspection was to be of cast steel billets? [975]

A. That corroborated it.

Q. I see. That corroborated it?

A. That corroborated it.

Q. Now, do you recall, Mr. Robinson, what time of the day your conversation was with Mr. Clark?

A. No, I do not.

Q. In other words, it could have been——

A. (Interposing): That is three and one-half years ago. I have no idea.

Q. It could have been the first thing in the morning?

A. I don't know; I haven't any idea.

Q. I notice your notes are dated May 16. I notice——

A. (Interposing): I know that it was early

(Testimony of Parker M. Robinson.)

enough so that we were able to telephone Seattle that very day.

Q. On the 16th?           A. On the 16th.

Q. And you said Mr. Clark did that?

A. He did that.

Q. And Mr. Clark—now, what would be early enough to telephone Seattle?

A. Well, we are in the same time zone. I wouldn't probably attempt to phone them after the middle of the afternoon. [976]

Q. Did you call——

A. (Interposing): I didn't call, no.

Q. (Continuing): ——in the middle of the afternoon?

A. I would guess that would be a reasonable assumption.

Q. Would it be a reasonable assumption, then, that the information you received from Mr. Clark was in the morning?

A. I haven't any idea. I don't know. I can't make any——

Q. (Interposing): Were you present when Mr. Clark received the call?

A. I was in my own office.

Q. Could you have received the call and referred it to Mr. Clark?

A. No, that isn't our procedure.

Q. You don't know when Mr. Clark received this call from Seattle, do you?           A. No.

The Court: From Seattle?

Mr. Morrow: Pardon me. From Mr. Gips?

(Testimony of Parker M. Robinson.)

The Witness: No.

Mr. Morrow: I misspoke myself.

The Witness: Let me clarify that just a little bit, if you will—the routine in our office as [977] to phone calls.

Q. (By Mr. Morrow): All right.

A. As I mentioned a moment ago, my name seems to be very well known, due to the fact that because it is on every report, and many people come in our office and ask for me. When I know I am not handling all the details, I have to refer them to Mr. Clark so that we have made it a rule that when anybody asks for me on the telephone they are immediately switched on to Mr. Clark first, and he is, therefore, able to take care of probably 95 per cent of the telephone calls, and if it needs my personal attention, then Mr. Clark will transfer the call to me.

That is just a general idea of the routine that we use for telephone calls.

Q. Yes. Well, then, Mr. Gips could have talked to you in the preliminary stages in which this order was placed?

A. I think in my deposition I said it may be possible, but I doubt it.

Q. Well, did you say “it could have been”? I don’t remember.

A. I will have to see the deposition to remember.

Q. Yes. [978]

(Whereupon, a document was handed to the witness by counsel.)

(Testimony of Parker M. Robinson.)

A. The question here:

“Now, do you recall that you did have a telephone conversation or conversations in Mr. Gips’ office as a preliminary matter to your obtaining the order?”

“It could have been, but I don’t remember. I doubt very much that I did because the information all came through Mr. Clark.”

Q. Was your recollection—is your recollection of talking to Mr. Gips as a preliminary matter to placing this order any better now than it was at the time you gave your deposition?

A. In thinking it over I cannot see the possibility that I talked to Mr. Gips until I went over to his office a week or 10 days later.

Q. Well, now, you have read the question, and I will ask you if there is any correction that you would like to make in your previous testimony.

The question was:

“Now, do you recall that you did have a telephone conversation or a conversation in Mr. Gips’ office as a preliminary matter to your obtaining the [979] order?”

“A. It could have been. I don’t remember.”

Mr. Gantt: Your Honor, what is counsel trying to do here? Correct the deposition, or correct the testimony today?

I think the question is highly improper.

Mr. Morrow: The witness has testified on direct examination that he didn’t meet Mr. Gips or go to his office until 10 days or two weeks later, and here

(Testimony of Parker M. Robinson.)

it appears he made a contradictory statement in the deposition. It is only fair to the witness I give him an opportunity to correct his previous statement if he desires to do so.

The Court: As I understand, he does not deny he made the answer as set forth in the deposition. Is that correct?

The Witness: No, I made that answer.

Q. (By Mr. Morrow, continuing): Is that your answer now?

Mr. Gantt: He has gone as far as he can go on impeachment at this time now, your Honor.

Q. (By Mr. Morrow, continuing): Is that your answer now?

A. My answer now is that I don't remember ever seeing Mr. Gips until I went to his office a week or 10 days after the order had been placed with us. [980]

However, I will still say that there may be a possibility that he may have called me previous to the time that he called Mr. Clark, and said, "Do you have an office in Seattle that could inspect steel products?" and I told him "Yes," and that is all there was to it. That is a possibility, and that is what I meant in that deposition, but no quotation was given him, no details were discussed. The first actual detail work was done by Mr. Clark with Mr. Gips over the telephone.

Q. Well, is it your testimony now that you did not have any conversation with Mr. Gips regarding

(Testimony of Parker M. Robinson.)

this order until approximately 10 days or two weeks after the date of entry of the order?

A. Except for tying in with what I said in the deposition; I will still stay with that. I might have talked with him, and he might have asked me if we had an office in Seattle, and could we do the work.

That would be as far as that would go.

Q. Then you did have a conversation?

A. I don't know.

Q. Well, didn't you——

A. (Interposing): I don't remember it.

Q. I will read you the questions and answers from your deposition on page 21, line 16—line 15: [981]

“Q. Is it possible, then, that in a conversation with Mr. Gips you told him that you could inspect and certify steel billets to conform to the ASTM specification A-17/29?

“A. That A-17/29, or 49-29—was not mentioned at any time until it was given to Mr. Clark on the phone by Mr. Gips.

“Q. I see. Well——

“A. It wasn't mentioned. If I did that—and it is quite possible I did have sales contact with Mr. Gips prior to this——

“Q. Yes.

“A. (Continuing): ——he would merely ask whether we could make inspection of steel billets in Seattle, and I would tell him we had an office in Seattle, and we can make inspection there. I am sure that there was no mention of a specification,

(Testimony of Parker M. Robinson.)

because if there had been, we would have had to look it up at the time that Mr. Gips called Mr. Clark, and being an obsolete specification, it takes time to look it up.”

Were those the questions put to you, and your answers?      A. Yes.

Q. At that time?      A. Yes. [982]

\* \* \*

Q. (By Mr. Morrow): And on page 24 of your deposition, line 10, were these questions put to you, and were these your answers?

I will start with six, in order to be fair.

“Q. In other words, there was no conversation between you and Mr. Gips concerning what the service of Pittsburgh Testing Laboratory should be?      A. That was with Mr. Clark.

“Q. That was with Mr. Clark?

“A. With Mr. Clark.

“Q. Other than perhaps you may have entered into a preliminary conversation with Mr. Gips at the outset?

“A. At the very start, Mr. Gips may have asked me, ‘Can we do this job in Seattle?’ and I would have told him, ‘Yes, we have an office in Seattle and we can do the work for you people.’ [983]

“I don’t remember it, but it is quite possible that that might have taken place.”

Mr. Gantt: If the Court please, I think counsel——

Q. (By Mr. Morrow, continuing): Were those questions put to you and were those your answers?

(Testimony of Parker M. Robinson.)

The Court: I don't see the purpose.

Mr. Morrow: He testified he didn't have any conversation with Mr. Gips.

The Court: He likewise testified, where you asked him, Mr. Morrow, about the possibility of a conversation, and now we are just reading in a deposition. He has already indicated, I think, in substance, what you are repeating there, Mr. Morrow.

Mr. Morrow: Yes.

Q. (By Mr. Morrow, continuing): Now——

The Court (Interposing): Unless there is something else?

Mr. Morrow: I believe it is repetitious, your Honor, and I will not press the question.

Mr. Gantt: I ask it be stricken, your Honor.

Mr. Morrow: I am agreeable.

The Court: What do you want stricken? [984]

Mr. Gantt: This entire last question stricken, where he started reading from the deposition.

The Court: That is when he started the last reading?

Mr. Gantt: Yes, your Honor. In fact, I want to get more than that stricken, just because I think it is repetition. He read the deposition three times.

Q. (By Mr. Morrow, continuing): Mr. Robinson, you admit that it is possible you had a conversation or conversations with Mr. Gips prior to your letter to him of May 21st——

Mr. Gantt: Objection, your Honor.

Q. (By Mr. Morrow, continuing): 1952?

(Testimony of Parker M. Robinson.)

The Court: The question is, does he admit?

Mr. Morrow: Yes.

Mr. Gantt: Objection, your Honor.

The Court: I will sustain the objection.

Q. (By Mr. Morrow, continuing): Did you have a conversation with Mr. Gips prior to May 21, 1952?

Mr. Gant: Objection, your Honor. He has already answered that.

The Court: I think you have covered that, Mr. Morrow. [985]

Mr. Morrow: All right.

Q. (By Mr Morrow, continuing): Now, in respect to these telephone conversations with Mr. Clark, those occurred, did they not, prior to your letter of May 21, 1952? A. Yes.

Q. And, as far as you know, Mr. Clark had no conversations concerning inspection and certification of these steel billets subsequent to Plaintiff's Exhibits 21 and 22—that is, the letters of May 20th and 21st—but the conversations were in reference to a time prior to that?

Mr. Gantt: Your Honor, can that question be read again, please?

The Court: It seems to be rather long. I will ask counsel to restate it.

Mr. Morrow: Yes; it is a double question.

Q. (By Mr. Morrow, continuing): So far as you know, Mr. Clark had no conversation with Mr. Gips concerning inspection and certification of steel billets subsequent to May 21, 1952?

(Testimony of Parker M. Robinson.)

A. Well, I think there were questions came up as to the depth of chipping and the taper allowed on the pattern, and things like that. [986]

I believe he did talk to Mr. Gips after that on details.

Q. But nothing with reference to the terms of the agreement between yourself and Grace?

A. What do you mean by "the terms"?

Q. Well, you had a contract, an agreement to inspect, according to you, cast steel billets, is that right?

A. That is right.

Q. These conversations in reference to the terms of that contract—there was nothing discussed so far as you know after May 21st, was there?

A. The very fact that he discussed taper on a pattern would indicate he was talking about casting.

The Court: The question was anything discussed as to the terms?

The Witness: Well, he was saying—I don't understand what terms are there.

Q. (By Mr. Morrow): You don't understand what terms are?

A. Terms might mean terms of payment, or something like that.

Q. I see; you don't understand what terms are?

A. I don't understand what you mean.

Q. Well, put it this way: [987]

It is your understanding, isn't it, that the conversations or any conversations Mr. Clark had with Mr. Gips subsequent to May 21, 1952, had to do

(Testimony of Parker M. Robinson.)

solely with the details of carrying out the inspection?      A. As far as I know.

Q. Yes. Will you refer to Plaintiff's Exhibit 22? Do you have that before you? Your letter of May 21st.      A. This is it—22, yes.

Q. You dictated this letter?      A. Yes.

Q. Which was an acceptance of Mr. Gips' order?

A. That's right.

Q. Now, in there you have reference to Silicon, is that right?      A. That is right.

Q. Now, I believe on your direct examination you stated that you had consulted with the ASTM A-17/29 specifications prior to writing this letter?

A. That is right.

Q. And did you obtain your chemical composition from the specifications?

A. I think I will explain that the same as I did in my deposition, that the usual chemicals—elements—wanted in a steel specification are carbon, manganese, sulphur, phosphorous and silicon; and we have [988] a standard \$10.00 charge for that, and the fact that silicon wasn't necessary in this particular specification didn't alter the price.

I think I said in my deposition that if they got the silicon, which we may or may not have done, I don't think it was done because it was sub-contracted to another laboratory, that would be lagniph. That is a New Orleans term for the thirteenth doughnut in a baker's dozen. I think I put that right in the deposition there.

Q. Yes. Now, does the chemical composition pro-

(Testimony of Parker M. Robinson.)

vision of ASTM A-17/29 specify silicon as a part of the chemistry?      A. No.

Q. Then you didn't read the ASTM A-17/29 with reference to the chemical composition, did you?

A. I read it, but I could easily make that slip because silicon is so frequently used as one of the elements to test for in a steel analysis. It is very common.

Q. By the way, where did you get your ASTM A-17/29 specifications?

A. Out of our own library.

Q. And where is your library located?

A. The second floor of the building. [989]

Q. It was necessary to go there to get them?

A. Yes. We have the current sets on the first floor where they are available. The older editions we put in our library because it is rather infrequent that we have to refer to them.

Q. You don't profess to have any technical knowledge on the manufacture of foundry products, do you, Mr. Robinson?      A. No.

The Court: Manufacture of foundry products?

Mr. Morrow: Manufacture of foundry products.

Q. (By Mr. Morrow): You wouldn't know whether it was proper or not, for example, to pour a casting flat where you intended to produce a forged product or a semi-finished product?

A. Yes, I could answer that because in my engineering work I have had occasion to use castings

(Testimony of Parker M. Robinson.)

a great deal, and I know that a great many good castings are made by casting them flat.

One particular instance, I have done a good deal of marine engineering work in shipyards in stem frame casting of a ship, which is a very important member of the ship's frame; it forms the opening in which the propeller rotates; and the after part of that [990] is the stern post which supports the rudder.

Those are big castings, and they are all cast flat. That is just one instance.

Q. I see. But you still don't profess to have any technical knowledge in respect to the product——

Mr. Gantt: Objection, your Honor. He just answered the very same question.

The Court: Objection overruled.

A. As to the detail foundry practice, I would not pretend to be an expert, but I do know foundry practice in general and what good castings can be made in different positions. I will answer that a little farther——

Q. (By Mr. Morrow, interposing): Well, you have answered it sufficiently for me.

A. All right.

Q. When you sent your formal order to Seattle on May 21, 1952, were you acquainted with Mr. Johnson?           A. Yes.

Q. How long had you been acquainted with him?

A. Wait a minute. I will have to amend that. I don't think I met Mr. Johnson until a later date than that.

(Testimony of Parker M. Robinson.)

I made a trip up here to Richland, [991] Washington, where they have the Atomic Energy Commission, and I think it was in the fall of 1954, and I think that was the first time I met Mr. Johnson.

I did not know him personally at the time of this transaction.

Q. Did you know his qualifications or the qualifications of any of his inspectors? A. No.

Q. To inspect steel billets? A. No.

Q. Is that why you advised him in your letter of May 21st, Plaintiff's Exhibit No. 5, that "since these billets are being shipped to a far-away country it is of vital importance that your inspection of them be thorough and accurate"?

A. That is right. I did not know Mr. Johnson at that time, or any of his inspectors, so that I put that in as a precaution.

Q. And did you also ask him to consult with you if he didn't have a competent inspector for this type of work? A. No, I didn't ask him that.

Q. Well, here is your exact words:

"If you do not have a competent inspector for this type of work, call in someone you know [992] to consult with you."

Mr. Gantt: Objection, your Honor. The exhibit speaks for itself.

The Court: Objection to what?

Mr. Gantt: To——

The Court: He is just reading the letter.

Mr. Gantt: I beg your pardon.

Q. (By Mr. Morrow, continuing): You made

(Testimony of Parker M. Robinson.)

that statement, did you, Mr. Robinson, because you were unfamiliar with the qualifications of the personnel in your Seattle office?

Mr. Gantt: Objection, your Honor; the exhibit speaks for itself.

The Court: The question is the purpose of the reference there. You may answer.

A. Yes, I did not know. I think I have already answered that. I did not know Mr. Johnson or his inspector, so I put it in as a precaution that they would follow what suggestions I made.

Now, to answer the other question that you started to ask——

Mr. Morrow: You needn't answer any further questions, sir, and thank you very much for your assistance.

The Court: Is that all? [993]

Mr. Morrow: Yes. [994]

\* \* \*

## WILLIAM WALLACE CLARK

upon being called as a witness for and on behalf of the defendant, and, upon being first duly sworn, testified as follows:

The Clerk: Will you state your full name and spell your last name, please?

The Witness: William Wallace Clark.

The Clerk: Clark, C-l-a-r-k (spelling)?

The Witness: Right.

## Direct Examination

By Mr. Gantt:

Q. State your name, sir.

A. William Wallace Clark.

Q. And your address?

A. 951 Eddy South, San Francisco, California.

Q. What is your present occupation?

A. Employee of the Pittsburgh Testing Laboratory in San Francisco.

Q. How long have you held that job?

A. Since the spring of 1948.

Q. Spring of 1948? A. Correct.

Q. And what is your particular job at the [999] present time?

A. Manager of the Laboratory.

Q. What was your job in 1952?

A. Manager of the Laboratory.

Q. And in what office?

A. In the San Francisco office.

Q. And do you have any engineering training in college? A. Yes, sir.

(Testimony of William Wallace Clark.)

Q. Will you state what that was?

A. I will have to go back a bit.

First, I took a B.S. degree in Chemistry and Metallurgy in Westminster College in Pennsylvania, and a Bachelor's—a Master's degree at Pennsylvania State in Pennsylvania, and a Doctor's degree at Johns Hopkins University.

Q. What was your doctorate in?

A. Chemistry and Metallurgy.

Q. When did you obtain your doctorate?

A. I finally obtained it around 1909.

Q. What business experience have you had prior to 1948, when you came to work with Pittsburgh Testing Laboratory?

A. I had been six years as Chief Metallurgist for the Enterprise Engine and Foundry Company in San [1000] Francisco.

Q. What did you do prior to that?

A. Prior to that I spent a number of years as Consulting Engineer for myself and also some years export and import business.

Q. What was the nature of the work that you performed at the Enterprise Engine and Foundry Company in San Francisco?

A. I had charge of all operations, making steel castings, iron castings, brass and bronze castings, and aluminum castings.

Q. So that your casting was both ferrous and non-ferrous materials?

A. Yes, sir.

Q. What did you do prior to being in the con-

(Testimony of William Wallace Clark.)

sulting engineering and export and import business?

A. I had been two years as manager of the—works manager of the Noble Electric Steel Company.

Q. Could you talk just a little bit louder, Mr. Clark? It is rather difficult to hear back here at the table.

What did you do prior to that?

A. I had spent two years in Connecticut as Metallurgist for Seymour Manufacturing Company, manufacturing German silver, brass and [1001] bronze.

Q. And what occupation did you have prior to that, or what job?

A. I had been for six years Chief Metallurgist for American Vanadium Company.

Q. What was the nature of that work?

A. Making ferro-vanadium, promoting its use in steel.

Q. What work or employment did you have prior to American Vanadium Company?

The Court: What company is that?

Mr. Morrow: American Vanadium.

Q. (By Mr. Morrow, continuing): What work did you have prior to that, Mr. Clark?

A. I had been Metallurgist for the Colonial Steel Company in Monaca, Pennsylvania.

Q. What was the nature of that particular work?

(Testimony of William Wallace Clark.)

A. That particular plant was a steel manufacturer, both open hearth and crucible.

Q. How many years were you there?

A. Two years.

Q. Was that a rolling mill?

A. A rolling mill and a hammer shop.

Q. By that you mean a forging—

A. A forging mill, yes, sir. [1002]

Q. You mean forging. What work did you do prior to working for Columbia Steel? Or, Colonial Steel?

A. Prior to that I had spent my vacations working in the steel mills in Western Pennsylvania.

Q. Were those rolling mills or forging shops or foundries? A. Mostly rolling mills.

Q. You say your vacations; was that when you were going to college? A. Yes.

Q. And post-graduate work? A. Yes.

Q. Most of your business experience, then, has been in the field of metallurgy and chemical engineering? A. Yes, sir.

Q. Are you familiar with the order for inspection or the request for inspection of steel billets by Grace and Company that has been discussed in this case? A. I am.

Q. Will you tell us what was your first connection with Grace and Company in this case?

A. My first connection with Grace and Company was a telephone call from Mr. Gips of W. R. Grace and Company.

(Testimony of William Wallace Clark.)

Q. And will you tell us, if you can fix the [1003] date of that telephone conversation?

A. May 16, 1952.

Q. And do you know what day of the week May 16th was? A. Friday.

Q. Were you at your office when you received this telephone conversation—this telephone call?

A. Yes, sir.

Q. At Pittsburgh Testing in San Francisco?

A. Yes, sir.

Q. Who is the manager—who was the manager in 1952 of your San Francisco office?

A. Mr. Robinson was the District Manager at that time.

Q. Was he your superior?

A. He is my superior—was and is my superior.

Q. What is the proximity of your office to Mr. Robinson's? A. Adjoining.

Q. Now, you testified that your first connection was with the telephone conversation with Mr. Gips of W. R. Grace and Company on May 16, 1952.

Will you tell us what took place in that telephone conversation—what was said and done—what was said by both parties? [1004]

A. Mr. Gips inquired if we had an office in Seattle. I told him that we had. He asked if we could inspect cast steel billets at that office, and I told him that we could. He told me that he had an order for 800 cast steel billets to be made at the Seattle Foundry under the specification A-17/29.

I asked him to hold the 'phone while I got the specification. I looked in my current bookcase for

(Testimony of William Wallace Clark.)

the current file at that time, which was 1949. It made no mention of A-17/29.

I returned to the 'phone and told Mr. Gips it was an obsolete specification, that I would have to go upstairs to our library and find the specification, and I would call him back.

Q. What did you do next?

Mr. Morrow: Now, just a minute. I move that that part of the answer which refers to the request to inspect cast steel billets be stricken as tending to contradict the terms of the written contract between Grace and Pittsburgh.

The Court: Well, the Court's ruling will be as I have indicated before. I think the testimony is admissible if for no other purpose than to establish the circumstances under which the contract, whatever it may have been, was made. [1005]

It may have a bearing on any interpretation of the contract if it is found to be covered by the letters, and therefore the Court overrules the objection, but does not admit it solely for the purpose of varying the terms of any integrated agreement.

Mr. Gantt: Very well, your Honor.

Q. (By Mr. Gantt, continuing): What did you do next, Mr. Clark?

A. I read the specification A-17/29, and then called Mr. Gips on the telephone.

When I got in contact with him I told him that I had the specification in front of me and that the specification calls for rolled or forged billets, but that his order, as he had quoted it to me, was for

(Testimony of William Wallace Clark.)

cast steel billets, and that this specification would not apply except in certain portions?

Mr. Savage: Except in what certain portions?

Mr. Morrow: Have you finished, Mr. Clark?

Mr. Gantt: I don't think that he has finished.

Mr. Morrow: I think he finished.

A. (Continuing): Well, period.

Mr. Morrow: I make the same motion.

The Court: The same objection may show and the Court's ruling will be the same. [1006]

Q. (By Mr. Gantt): Was anything else said in that telephone conversation?

A. Mr. Gips told me he had this order for cast steel billets, and it was placed with Seattle Foundry, and I told him in that case we could inspect for cast steel billets; and he also inquired what the price would be, and I told him \$4.00 an hour plus any incidental expense he required, and told him that all we could inspect for would be chemical analysis, surface defects and size.

He also inquired the cost of the chemical analysis, which I gave him. It was \$10.00, a package deal.

Q. What do you mean— "\$10.00, a package deal"?

A. Well, in the steel business the ordinary, plain carbon steel calls for five elements, and we have a price on that of \$10.00. If they only get four, it is still ten dollars, because it is a package operation.

Q. Where was that analysis to be done?

A. In our laboratory in San Francisco.

Q. Did you tell Mr. Gips that?

A. Yes, sir.

(Testimony of William Wallace Clark.)

Q. Was that satisfactory with him?

A. That was satisfactory to Mr. Gips.

Q. Did you make any notes of that [1007] telephone conversation?

A. I always make notes of any telephone conversation as it proceeds.

Q. Did you make any notes of that telephone conversation, Mr. Clark?

A. I made notes of that telephone conversation.

Q. I will hand you what has been marked Defendant's Exhibit A-1, and ask if you can identify those—that exhibit?

A. That is my writing, yes, sir, made by myself.

Q. When was it made by you?

A. It was made on May 16th.

Q. And at what time?

A. Time of the day?

Q. Yes.           A. I do not remember.

Q. Was it made during or shortly after your call with Mr. Gips?

A. It was made shortly after my second call to Mr. Gips.

Q. What did you next do, Mr. Clark?

A. After making this—these notes, I took them into Mr. Robinson's office, which is next door to mine, and told him about the order, and asked him—as I was very busy, if he would please write up the work order. [1008]

Q. Did you leave your notes, Exhibit A-1, with Mr. Robinson?

(Testimony of William Wallace Clark.)

A. I left them with him for a short time and he brought them back.

Q. What was your next connection with this employment?

A. On that same day Mr. Gips had told me that this particular job was in a rush, that Seattle Foundry was ready to proceed, and I conferred with Mr. Robinson and suggested that I call Mr. Johnson, the Seattle manager, and give him the details of the inspection, and have him contact Seattle Foundry to set up procedure.

Q. What did you do next?

A. That is my total connection with it that day.

Q. Did you call Mr. Johnson?

A. Yes, I called Mr. Johnson and told him the full details of the inspection.

Q. Do you recall whether in that telephone conversation you made reference to your notes?

A. Yes, sir.

Q. Defendant's Exhibit A-1?

A. Yes, sir, I had the notes in front of me.

Q. What was your next connection with the job, the billet inspection job in this case?

A. The next day, which was Saturday, May 17th, [1009] I had our secretary write a letter to Mr. Johnson confirming my telephone conversation.

Q. Did you dictate the letter?

A. Yes, sir.

Q. I will hand you what has been marked Defendant's Exhibit A-3. Is that your signature?

A. That is my signature.

(Testimony of William Wallace Clark.)

Q. Is that the letter you wrote on May 17th?

A. That is the letter I wrote on May 17th.

Q. To the Seattle office of Pittsburgh?

A. To the Seattle office of Pittsburgh Testing Laboratory.

Q. Is it your habit to work on Saturdays, Mr. Clark?

A. I have worked every Saturday for the last five years.

Q. And do you have a secretary down on Saturdays?

A. The secretary on Saturdays is there from 9:00 o'clock until 1:00.

Q. What is her name?                      A. Mrs. King.

Q. What did you next do in connection with the billet inspection job?

A. The next connection I had with the order was a call from Mr. Gips asking about the taper on the [1010] billets.

Q. What was said in that conversation, to your best recollection?

A. To my best recollection he had a letter from Seattle inquiring about the taper on the billets, and I told him that when you were making cast billets in sand that there had to be a taper on the pattern, or it would not pull clean.

In other words, if it was perfectly square, it would ruin the sand mold.

Mr. Morrow: Pardon me. Was the time of that conversation established?

(Testimony of William Wallace Clark.)

Q. (By Mr. Gantt): Will you tell us approximately when that conversation took place?

A. I would—offhand, I would say it was a week or ten days later, maybe more.

Q. Following—a week or ten days later than what?      A. Than May 17th.

Q. What was your next connection with the billet order, Mr. Clark?

A. The next connection I had with this billet order was that Seattle did not understand the chipping and cleaning of the billets for further forging or [1011] rolling.

The Court: When you speak of Seattle, you are speaking of your office?

The Witness: I beg your pardon?

The Court: You said Seattle didn't understand.

The Witness: That Mr. Gips called me and said that their Seattle office did not understand.

Q. (By Mr. Gantt): What was said—anything else said in that conversation by you with Mr. Gips?

A. I went back to the library and got the specification A-17/29, and read to him the limits to which chipping could be done.

Q. I will hand you what is Exhibit A-33, Defendant's Exhibit A-33, Part I, Metals, ASTM Standards of 1939 of the American Society of Testing Materials.

I will ask if you can identify that volume?

A. That is a volume of ASTM, 1939.

Q. From your library?

(Testimony of William Wallace Clark.)

A. I think it does—it doesn't have our time in it, but it is very much like the one that we had.

Q. Is this the volume you consulted?

A. That is the volume I consulted.

Q. On the chipping question?

A. On the chipping question.

Q. Is this the volume that you consulted when you [1012] first—in your second conversation with Mr. Gips?

A. That is the one that contained A-17/29.

Q. What was your next connection with this job, Mr. Clark?

A. Why, I wrote a letter to our Seattle office explaining in detail the chipping process.

Q. Handing you what has been marked Plaintiff's Exhibit No. 4—wait a minute—Defendant's Exhibit A-9—I ask if you can identify that?

A. That is my signature, and that is the letter that I sent to our Seattle office.

Q. To whose attention in Seattle?

A. Attention of M. E. Johnson, Seattle Manager.

Q. And what is the date of that letter?

A. June 4th.

Q. What was your next connection with this job?

A. The next connection with this job was Mr. Gips called me in regard to a manganese determination that was three points higher than the specified maximum given in the specifications.

(Testimony of William Wallace Clark.)

Q. What was the substance of that telephone conversation?

A. He asked me what to do about too much manganese in that particular heat.

Q. What was your reply? [1013]

A. I told him that in my mind the .03 per cent would do no harm, but he should contact his client and see if they wanted to accept.

Q. Now, prior to your telephone conversation of May 16th, 1952, with Mr. Gips, had you had any experience in the foundry business with the production of cast steel billets? A. Yes, sir.

Q. And will you describe what experience you had had in that connection?

A. Some time after the end of World War II, steel was very short, and while at Enterprise Engine and Foundry Company we received an order for cast steel billets, which we produced.

These billets were cast in sand, and as a regular foundry procedure.

Q. Were they poured flat, or vertical?

A. They were poured flat.

Q. This was where?

A. At the Enterprise Engine and Foundry Company.

Q. In San Francisco?

A. In San Francisco.

Q. Were you in charge of that operation?

A. I was in charge of that operation as [1014] metallurgist.

(Testimony of William Wallace Clark.)

Q. I don't believe I asked you, Mr. Clark, if you were a member of any technical societies?

A. I am.

Q. Will you please state what technical societies you belong to?

A. American Foundrymen's Society, American Welding Society, American Society of Metals, and Society of Non-Destructive Testing.

Q. How long have you belonged to the American Foundrymen's Society?      A. Since 1942.

Q. Do you know of any foundry at the present time that produces cast steel billets?      A. I do.

Q. Where are they located?

A. There is one located in Berkeley, California, Pacific Steel Casting Company, who from time to time casts steel billets for forging.

Q. Did you ever meet Mr. Gips in person?

A. Not until after the claim came in from W. R. Grace and Company.

Q. Was that some time in 1953?

A. I believe it was.

Q. In your telephone conversation with Mr. Gips, which you testified to, did Mr. Gips tell [1015] you where the material was going to be shipped?

A. He told me that the material was to be shipped to New Zealand.

Q. Did Mr. Gips in those telephone conversations to you tell you the intended use of the material in New Zealand?

A. He did not mention the end use in any manner.

(Testimony of William Wallace Clark.)

Q. He did not tell you that the material was going to be used for locomotive parts and coupler heads? A. He did not.

Q. Did Mr. Gips read to you Plaintiff's Exhibit number 1, which is a letter of April 3, 1952, from Grace, Washington office, to Grace, San Francisco office? A. He did not read that letter to me.

Q. Did he at any time during your telephone conversations prior to the claim in this case show you or read to you the purchase order that Grace had from the New Zealand government?

A. He did not read it to me, or show it to me.

Q. Will you define for us the word "porosity" as it applies to the casting business in the steel business?

A. Porosity as applied to the steel business, casting business or steel business, is voids in the steel. [1016]

Q. How are they formed, or what causes them?

A. They are formed by gas which has become entrapped in the metal and is thrown out when the metal solidifies.

Q. What are blow-holes?

A. A blow-hole is a large porosity caused by a large accumulation of gas which is trapped in the inside of the steel.

Q. Now, is the porosity or the blow-holes which you have described visible in a casting from visual inspection of the finished casting?

A. Blow-holes and porosity are not visible to the eye as when the molten steel comes in contact

(Testimony of William Wallace Clark.)

with the cold sand of the mold, it immediately solidifies, and the center of this casting is molten steel; and as this center solidifies, it throws out the absorbed gas, which makes the porosity and the blow-holes in the center of the casting.

Q. Well, then, would you say that porosity and blow-holes were visible on the outside surfaces of the casting?

A. I would say they were not visible.

Q. You heard Mr. Murphy—or did you hear Mr. Murphy testify in this case?

A. Yes, sir. [1017]

Q. All of it—all of it?                      A. Yes, sir.

Q. You were here in the courtroom?

A. I was in the courtroom.

Q. Did you hear Mr. Murphy describe how he cross-sectioned the castings?

A. I think he testified that he cross-sectioned approximately twelve, about one dozen of the billets that he was casting at his foundry.

Q. Did you hear him describe his cross-sectioning?                      A. Yes, sir.

Q. I believe he testified that he would take a billet and cut it down the center?

A. Yes, sir. [1018]

\* \* \*

Q. (By Mr. Gantt): Assuming, Mr. Clark, that a foundry is producing cast steel billets, an order of cast steel billets of the size 9½ inches by 4 inches by 4 feet 1½ inch, 750 of that size, to conform to

(Testimony of William Wallace Clark.)

chemical requirements, visual examination, and size, to ASTM A-17/29; and assume further that in the process of making the billets the foundry in the early stages of the manufacture of the billets takes about one dozen of the billets as they had been cast, and cuts them down the center lengthwise, and then cuts them in four or five places along the width.

Now, would that be good foundry practice?

A. That is good foundry practice.

Q. Assume further that the foundry, after making [1019] such cross-sections, did not discover any blow-holes or pinholes or porosity in any of the sections which had been cross-sectioned.

Will you tell us whether——

Mr. Gantt: Strike that; strike that question.

Q. (By Mr. Gantt, continuing): Now, did you hear Mr. Murphy's testimony as to how he manufactured the cast steel billets which were shipped or delivered or furnished to W. R. Grace and Company?

A. Yes, sir.

Q. In your opinion, did he employ good foundry practice and procedure in his casting operation?

A. His description of his foundry practice seems to me to be good foundry practice.

Q. In what ways can internal defects in steel castings be determined?

A. They can be determined by the destructive test of sectioning, or they can be determined by radiograph, which is non-destructive.

Q. Will you examine Exhibit—Plaintiff's Ex-

(Testimony of William Wallace Clark.)

hibit number 56, the portion relating to ASTM A-17/29; will you examine that a moment, Mr. Clark?

Are you familiar with that specification?

A. I am familiar with that specification, yes, sir. [1020]

Q. Will you tell me, Mr. Clark, whether A-17/29 specification of ASTM requires either radiography or cross-sectioning?

Mr. Morrow: I believe the exhibit speaks for itself.

The Court: You are referring to the specification here involved?

Mr. Gantt: Yes, I am referring to the specifications, your Honor.

The Court: Well, I think it is a matter which is a scientific subject, and I think this man is an expert.

I assume you are calling upon him in that capacity?

Mr. Gantt: Put it this way: By this question I am asking as an expert, your Honor, yes; I think he has been sufficiently qualified.

A. The specification does not call for sectioning, or for radiographs.

Q. (By Mr. Gantt): Did you hear Mr. Tom Williams testify in this courtroom last Friday in this case? A. Yes, sir.

Q. Did you hear him testify as to the approximate cost of radiography of a steel billet of the size [1021] and description mentioned in this case?

(Testimony of William Wallace Clark.)

A. Yes, sir.

Q. I believe he testified that the approximate cost for each billet would be about \$80.00?

A. Yes, sir.

Q. Do you agree with Mr. Williams' estimate of that cost?

A. Well, he was rather moderate in his estimate of the cost.

Q. Are you familiar with radiography?

A. Yes, sir.

Q. Do you have equipment in your San Francisco office to radiograph metal products?

A. We have two X-ray machines and two different sources of isotopes, which are classed generally as gamma rays.

Q. And you—do you from time to time employ these?

A. I have two men that do nothing else but X-ray and Gamma ray.

Q. And under whose supervision are they?

A. Under my supervision.

Q. Are you familiar with the cost that is charged for radiography?

A. I have to quote the price on these, on each order that we receive for radiograph. [1022]

Q. I believe there has been some testimony as to the word "cropping" of a billet, or "discarding."

Will you tell us at what stage in the manufacture of a billet, a steel billet under A-17/29 of ASTM the billet is cropped or discarded?

A. The cropping is done after the billet, ingot

(Testimony of William Wallace Clark.)

or billet, has been reduced to a convenient size to shear off the top end.

Q. Now, are ingots—now, is the ingot cropped, or is that done in the billet stage?

A. The cropping is done in the billet stage.

Q. I will hand you Exhibit 20, which is a letter dated May 16, 1952, from W. R. Grace and Company, Seattle, to the Seattle Foundry Company; and I will ask you to state if you have ever seen that letter or a copy of that letter?

A. I do not remember having seen a copy of that letter at the present time, unless it was in one of your exhibits.

Q. Well, let me ask you this:

Did you see this letter at any time prior to the time of the claim arising in New Zealand?

A. No, sir.

Q. On these billets?                      A. No, sir. [1023]

Mr. Gantt: Just one minute, your Honor.

(Whereupon, there was a brief pause.)

Q. (By Mr. Gantt): Now, Mr. Clark, I hand you what has been marked Defendant's Exhibit 5—rather, Plaintiff's Exhibit 57—which purports to be a photograph of a cross-section after cutting, shearing a portion of the billet away, off a  $9\frac{1}{2}$  inch by 4 inch by 4 and  $\frac{1}{2}$  foot billet, which, perhaps, took place in New Zealand after these billets had been shipped to the New Zealand Government Trade Commissioner.

(Testimony of William Wallace Clark.)

Will you examine that photograph and state what is indicated?

A. That is an indication of an internal blow-hole.

Q. Could that be seen by visual examination?

A. No, sir.

Mr. Morrow: What exhibit was that, please?

Mr. Gantt: 56.

Mr. Morrow: 56?

Mr. Gantt: Your Exhibit 56.

Q. (By Mr. Gantt): I will hand you what has been marked Plaintiff's Exhibit 58, which purports to be photographs of sections of steel billets of the size 6 inches by 3 inches by 10 feet, after they had been cross-sectioned or cut off [1024] 9 to 12 inches from the end of the steel billet.

With regard to the top photograph, which is referred to as cast number 930, are there any defects shown in that photograph?

A. They show very small defects which look like blow-holes just under the skin of the casting.

Q. Would those be visible——

The Court (Interposing): Just under what?

The Witness: Just under the skin of the casting.

Q. (By Mr. Gantt, continuing): Would those be visible upon examination of the casting without cutting it? A. No, sir.

Q. Now, will you examine the photograph of a billet in cast number 1010, which is a photograph of a portion of the billet, and then state what those—what is indicated by that photograph?

(Testimony of William Wallace Clark.)

Mr. Morrow: Pardon me. Is that still Exhibit Number 58?

(Whereupon, Mr. Gantt nodded in the affirmative.)

Q. (By Mr. Gantt, continuing): What is shown by the photograph of cast number 1010?

A. That shows a considerable number of blow-holes inside the casting. [1025]

Q. Now, would those be visible upon visual examination? A. No, they would not be visible.

Q. Now, does the same hold true for the defect in the casting on the bottom of the page?

A. The casting at the bottom of the page shows blow-holes which do not come to the surface of the casting.

Mr. Gantt: One moment, your Honor.

(Whereupon, there was a brief pause.)

Q. (By Mr. Gantt): Would you say that the cross-sectioning of three out of 750 steel billets of the size 9 inches by 4 inches by 4 feet 1½ inch was a fair sampling of the billets?

A. In the percentage, that is not a fair sampling.

Q. Would the fact that some internal defects were disclosed by cross-sectioning three out of 750 billets of the size described indicate that 50 per cent of the remainder of the billets were defective?

A. It would not indicate that.

Mr. Gantt: No further questions, Mr. Clark.

Mr. Savage: Will you please note that Seattle

(Testimony of William Wallace Clark.)

Foundry is cross-examining Mr. Clark here in the cause of Pittsburgh versus Seattle Foundry? [1026]

### Cross-Examination

By Mr. Savage:

Q. Mr. Clark, referring to Exhibit—Defendant's Exhibit A-33, which is the ASTM Standards of 1939, do I understand that this is the actual book that was in your library in San Francisco?

A. As near as I know, that is.

Q. This is the actual book issued in 1939 that you examined when Mr. Gips talked to you on the 'phone and you informed him that you would go to the library and examine the ASTM A-17/29?

A. That, as far as I know, is the actual book.

Q. Mr. Clark, is such a volume, ASTM Standards, 1939, or any equivalent volume, an essential part of the business of a branch office operated in San Francisco?

A. The ASTM Standards are an essential part of our business.

Q. And I assume that a volume such as this 1939, Defendant's Exhibit A-33, or an equivalent, has been in your library for many years?

A. Since possibly 1940, when the 1939 comes out.

Q. Would you say that the variety of work which you perform is predicated—I mean the investigation or inspection of the work called for by your branch would in a large percentage be based upon these standards? [1027]

(Testimony of William Wallace Clark.)

A. They are based upon ASTM, M.I.L., Federal Air Force, and other specifications. ASTM is only a part of the specifications which we have to refer to.

Q. Yes. I understand that. But would you say, considering the type of work you do in the San Francisco area, and the variety of work that you do, would a large percentage of your work be predicated upon ASTM specifications?

A. A percentage of it would be. I could not give you the exact percentage.

Q. Well, would it be large or small?

A. Well, considering the many other different specifications, I would say that it has its certain value.

Q. Now, then, at the time that you had this conversation with Mr. Gips, which I understand was on May 16th, 1952, did Mr. Gips, when he made inquiry as to your being capable of inspecting cast steel billets in the Seattle area, did he mention the name of the supplier or the producer?

A. He told us it would be made by the Seattle Foundry Company.

Q. And at that time in the course of the conversation you told him, after going upstairs to examine the ASTM specifications, that the cast steel billets could not comply because that meant rolled or forged steel; am I [1028] correct?

A. That according to A-17/29 that called for rolled or forged billets, but that Seattle Foundry could not make rolled or forged billets.

(Testimony of William Wallace Clark.)

Q. Did you tell him that?

A. I told him that.

Q. How did you know that?

A. During the war times it was my business to know what each foundry, which I believe was ten at that time here, could produce, and I am also a member of the American Foundrymen's Society, and we, as a Society, know what each foundry on the Coast is capable of producing.

Q. Well, then, if you had never had a conversation with Mr. Gips at any time in your life prior to May 16th, 1952, you personally knew that Seattle Foundry could only cast steel billets; is that what I understand you to say?

A. I personally knew that from former information.

Q. And you knew that on May 16, 1952?

A. I knew that May 16, 1952.

Q. And you knew that they couldn't roll or forge steel?

A. I knew that.

Q. Now, then, at the time you had this conversation with Mr. Gips, did he give you the substance of any agreement which they had with Seattle Foundry, either oral [1029] or in writing?

A. He gave me no information except that Seattle Foundry were making the cast steel billets.

Q. Did you, before you called Mr. Johnson in Seattle, acquire the information as to the contents of any agreement, oral or written, between Seattle Foundry and Grace?

(Testimony of William Wallace Clark.)

A. That was of no interest to me, so I would make no inquiry.

Q. Now, then, when you called Mr. Johnson of the Seattle office, I assume it was between May 16th and May 17th?      A. It was on May 16th.

Q. May 16th. Did you inform Mr. Johnson that Grace wanted cast steel billets to be inspected?

A. I did.

Q. Did you inquire of Mr. Johnson if he had ASTM specifications?

A. I don't remember that I did.

Q. Did you tell Mr. Johnson that if he inspected cast steel billets that it would not include rolled or forged?      A. I did.

Q. So that you told Mr. Johnson he was not going to inspect rolled or forged billets? [1030]

A. That is correct.

Q. In substance, you have predicated your testimony on your notes and also on your independent recollection, is that right?      A. Yes, sir.

Mr. Savage: That is all.

### Cross-Examination

By Mr. Morrow:

Q. Mr. Clark, you have had a long experience in the steel business, haven't you?      A. Yes, sir.

Q. And you spent eight years, did you, with the Enterprise Engine Works in San Francisco?

A. Six years, sir.

Q. And during that period you were their metal-

(Testimony of William Wallace Clark.)

lurgist?           A. Chief metallurgist, yes, sir.

Q. Chief metallurgist; and they employed—they had a foundry, did they?

A. They had a foundry.

Q. And you were in charge of sand casting?

A. I was in charge of all production.

Q. And prior to that you worked in a rolling mill, didn't you? [1031]

A. I worked in a number of rolling mills.

Q. What was the product that was manufactured by the rolling mill?           A. Rolled steel.

Q. Was it a steel billet?

A. Partially rolled steel billets.

Q. Partially?

A. Billets, steel billets, are partially finished material.

Q. I understand; one of the products at the place you worked was a steel billet?

A. That was part of the process.

Q. And you are a doctor, aren't you?

A. Ph.D., yes.

Q. In what?

A. Chemistry and metallurgy.

Q. And how long have you been with Pittsburgh Testing Laboratory?

A. Since the spring of 1948.

Q. Since the spring of 1948?           A. Yes, sir.

Q. And prior to the spring of 1948, you were engaged in various jobs connected with the manufacture of steel products and metal products, were you?

(Testimony of William Wallace Clark.)

A. Prior to 1948 I was six years with Enterprise [1032] Engine and Foundry Company.

Q. What did they manufacture?

A. Steel, iron, brass and aluminum castings.

Q. By method of sand casting?

A. By method of sand casting.

Q. And did they manufacture cast steel billets?

A. Only once that I remember.

Q. Was that a—what size was that billet?

A. As I remember, it was 4 by 4 by 30.

Q. And you said it was poured flat on that occasion?

A. It was poured flat on that occasion.

Q. What was the end use of that?

A. I have no idea.

Q. Did you have any idea at the time?

A. I did not.

Q. Now, was that billet which you produced on that occasion of forging quality steel?

A. It was forging quality steel.

Q. And a cast steel billet, according to your understanding, is a forging quality steel?

A. Not necessarily.

Q. Not necessarily?           A. No, sir.

Q. Could it be?

A. It could be any kind of steel. [1033]

Q. Well, let me ask you right here just a little bit ahead of myself:

The cast steel billets which you instructed your inspector to inspect for Grace and Company, were

(Testimony of William Wallace Clark.)

those cast steel billets supposed to be of forging quality steel?

A. According to the specification A-17/29 they were called **forging or rolling quality**.

Q. So that the cast steel billet which your inspector was to inspect was of a forging quality?

A. Yes, sir.

Q. And if the end product was not of a forging quality steel billet, then it would not comply with the specifications; is that right?

A. I do not get the sense of your question.

Q. Well, I will repeat it.

If the final product, when completed, was not a cast steel billet of forging quality, then it would not comply with the specifications which you understood to have received from the Grace and Company for cast steel billets under ASTM A-17?

A. If the cast steel billets made by Seattle Foundry were of an analysis as prescribed in A-17/29, they would be of forging quality.

Q. I see. But the question is hypothetical: [1034]

If, actually, the product produced by Seattle Foundry was not forging quality, then it follows, doesn't it, Mr. Clark, that they would not comply with the specification you received from Grace and Company?

A. There is no evidence in my mind that the billets were not of forging quality.

The Court: Mr. Clark, in the hypothetical question you must assume the facts that are given in the question.

(Testimony of William Wallace Clark.)

In other words, in answering the question it isn't for you to determine what the evidence is.

Do you have that in mind?

Mr. Morrow: May the reporter read the question?

The Court: The reporter will read the question.

(Whereupon, the following was read by the reporter: "Q. But the question is hypothetical: If, actually, the product produced by Seattle Foundry was not forging quality, then it follows, doesn't it, Mr. Clark, that they would not comply with the specification you received from Grace and Company?")

Mr. Gantt: Objection, your Honor, on the grounds that that is based upon the assumption that the [1035] product produced was not of forging quality.

There is no testimony that they were not of forging quality.

The Court: This is cross-examination, Mr. Gantt. Objection overruled.

A. (Continuing): If the castings produced by Seattle Foundry were not forging quality, they would not comply with A-17/29. [1036]

\* \* \*

Q. (By Mr. Morrow): Assume again, Mr. Clark, that the product actually produced by Seattle Foundry was not a forging quality cast steel billet.

The question is:

(Testimony of William Wallace Clark.)

Would that particular product comply with the instructions you received from Mr. Gips?

A. If the castings produced by Seattle Foundry was not a forging quality billet, they would not comply with the order as received from W. R. Grace and Company.

Q. And what do you understand that order to have been? A. To have cast steel billets.

Q. As per ASTM?

A. As per part of ASTM A-17/29.

Q. Mr. Clark, is it correct to assume that it isn't necessary for you to refer to the ASTM specifications in order to instruct an inspector what he should look for and what he should do in inspecting castings?

A. As there are several hundred—there is more than one thousand specifications under ASTM, and I cannot keep them all in my head at any time——

Q. (Interposing): I understand, but if [1037] the matter is simply a matter of sand casting, you know exactly what an inspector should look for in the matter of visual examination, do you not?

A. From my past experience I can instruct my inspectors without looking at ASTM.

Q. That information is not contained in ASTM, is it? A. It is not contained in ASTM.

Q. That is a matter, is it not, of the professional knowledge of the inspector? A. That is correct.

Q. And you yourself are an expert in connection with castings, are you not?

(Testimony of William Wallace Clark.)

A. I would not call myself an expert, but I have had plenty of experience.

Q. Yes; now, what would be your instructions, in reference to the instructions you gave Mr. Johnson in respect to casting, or to inspecting cast steel billets, you drew upon your personal experience and knowledge, did you not? A. I did.

Q. Now, assume—and I know that this is not what you feel the order to be, but just assume—that the order was for steel billets as per ASTM A-17/29 without any qualifications. [1038]

From your experience could you tell the inspector how to inspect? A. Yes, sir.

Q. And what would those instructions be?

A. His instructions would be to check the heat, the analysis, and surface inspection of the billets in the mill.

Q. Yes. Well, now, Mr. Clark, aside from the specific instructions that you gave to your inspectors in reference to determining inspection of steel billets or cast steel billets, does the inspector have the duty to see that the end product—that is, the finished product—is the product called for in the specifications? A. As near as——

The Witness: Could I have that repeated, your Honor?

The Court: The reporter will read the question.

(Whereupon, the following was read by the reporter: “Q. Well, now, Mr. Clark, aside from the specific instructions that you gave to

(Testimony of William Wallace Clark.)

your inspectors in reference to determining inspection of steel billets or cast steel billets, does the [1029] inspector have the duty to see that the end product—that is, the finished product—is the product called for in the specifications?’’)

A. (Continuing): He is instructed to inspect the billets as called for in the specifications given.

Q. (By Mr. Morrow): Yes. And if—and is he required to refer to the order of the customer to see what the specifications are?

A. He never sees the order for the billets.

Q. That is, in your method of doing business your individual inspectors never see the order?

A. They never see the order. That is the customer's.

Q. Is it your function or business to see or examine the order, Mr. Clark?

A. Our work order?

Q. Yes; you, personally.

No, no, I am referring to the customer's order.

A. We never see the customer's order.

Q. You never see the customer's order?

A. No.

Q. Never?

A. Well, it is possible, but there is no [1040] reason to.

Q. Why is there no reason to?

A. Our client gives us orders to inspect in a certain manner, or to a certain specification; and if

(Testimony of William Wallace Clark.)

he would call for so many billets of A-17, or A-7, or A-15, we have no interest in what his original order called for. That is what the customer called for.

Q. Well, you would have an interest, wouldn't you, Mr. Clark, to the extent that you would want to know what he was designating—whether he was designating locomotive wheels, or structural steel, or something like that?

A. Can I give you an instance, please?

Q. Well, if you can, just answer the question, first, if you can.

A. We very seldom know the end use of the material that we inspect.

Q. Mr. Clark, I had no reference to trying to determine the end use. All I am referring to is a simple order from a customer to inspect steel billets or cast steel billets.

Now, what I am talking about is:

Do you or your inspectors receive that order? Do you know the contents of it?

A. We know the contents of the order as [1041] given by our client to us.

Q. So that it is important, is it not, for the inspector to know what the order is?

A. The order to us, yes.

Q. You said that you were in the export and import business at one time, Mr. Clark. What period was that?

A. Oh, that was partly from 1926 or 1927 to 1942.

(Testimony of William Wallace Clark.)

Q. Well, let's see, what would that be—ten to 15 years? A. Approximately, yes.

Q. And where were you located?

A. San Francisco.

Q. And were you in business for itself?

A. Yes, sir.

Q. And what products did you deal in?

A. Oh, a number of products; partly automobiles, some steel, other products that we could find an order for.

Q. Was your business either chiefly import or export? A. Mostly export.

Q. Mostly export?

A. Export was automobile, steel products, [1042] radios—oh, a number of different items that were needed in foreign countries.

Q. Well, in the export business it is necessary to have your contact with the customer abroad, I presume? A. Yes, sir.

Q. And also to have suppliers which supply you with the export material? A. Correct.

Q. And you conducted such a business, didn't you? A. Yes, sir.

Q. Now, outside of steel products, when you—of soft materials, such as lumber and flour and so forth, did you have any personal knowledge of the—of whether or not the material as specified complied with specifications?

My question may not be intelligible. If it isn't, just say so. A. It is not intelligible.

(Testimony of William Wallace Clark.)

Q. All right; I will try to rephrase the question.

You didn't always know exactly what was in the product you ordered in your export business to furnish customers? A. Exactly what was in it?

Q. Yes; well, now, tell me what products [1043] you bought besides steel?

Automobiles, you said. What else?

A. All right; automobiles, radios.

Q. Lumber?

A. No, I don't believe we ever exported lumber.

Q. Yes; flour? A. No flour.

Q. Any grain?

A. No grain. It was mostly manufactured articles.

Q. Most manufactured articles; were they according to specification?

A. Not necessarily according to specification. We would receive an inquiry, find a potential supplier, get samples, ship them over to the country, and quote a price.

Q. Did you deal in any commodities that had ASTM specifications or other standards?

A. On steel, yes.

Q. Well, now, you as an expert would be either familiar with the specifications set forth under ASTM, or would have ready reference to it?

A. I would have ready reference to it in the library.

Q. You didn't pretend to know what the speci-

(Testimony of William Wallace Clark.)

fications were under ASTM when you ordered products, [1044] did you?

A. If the product was ordered under an ASTM specification, it was necessary for me to know what the specification was.

Q. It was necessary? You considered it necessary? A. Yes, sir.

Q. Well, let's take steel billets as per ASTM specifications.

If you had received an order for steel billets as per ASTM specifications, would you have known what was included, offhand, in those specifications?

A. I would have—not have known offhand, no; but I could easily procure the information.

Q. Would it be necessary for you to procure the information in order to place an order with some supplier? A. It would——

Mr. Gantt (Interposing): Objection, your Honor, unless counsel can pin it down to what specification he is talking about.

Mr. Morrow: I am going on from this question.

A. (Continuing): It is not absolutely necessary if you are purchasing from a reputable firm. [1045]

Q. (By Mr. Morrow): Yes.

A. And quote the specification, and they give you a certificate, you are fairly safe.

Q. As a matter of fact, it is true, is it not, Mr. Clark, that the ASTM specifications are a standard upon which both the purchaser and the manufacturer can rely, in one ordering the product and the other selling the product? A. That is correct.

(Testimony of William Wallace Clark.)

Q. And isn't that what is usually done in connection with specifications under ASTM—that is, to refer to the ASTM specification numbers?

A. When it is referred to, that is the specification.

Q. Now, in connection with your conversation with Mr. Gips, Mr. Clark, I believe you said that Mr. Gips called you; is that correct? Mr. Gips called you? A. Correct.

Q. And did he tell you that he had an order from New Zealand for steel billets?

A. He told me he had an order from New Zealand for cast steel billets.

Q. All right; that is what he told you?

A. Yes, sir. [1046]

Q. He said his order from New Zealand was for cast steel billets? A. For cast steel billets.

Q. And did he say what the specifications were?

A. He told me they were A-17/29.

Q. And you, according to your testimony, looked up that reference and called him back, and said that the Foundry could not produce——

A. (Interposing): I called him back and——

Q. (Continuing): ——steel billets under ASTM A-17/29?

A. I called him back and told him the Foundry could not produce steel billets exactly in conformance to A-17/29; that that called for rolled and forged billets and they were furnishing cast steel billets.

(Testimony of William Wallace Clark.)

Q. Why did you tell him that the Foundry could not produce steel billets as per ASTM A-17/29?

A. Because ASTM calls for rolled and forged billets, and Seattle Foundry could not produce rolled and forged billets.

Q. But, as I understand, Mr. Clark, you said that Mr. Gips had already told you that the order was for cast steel billets as per ASTM A-17/29?

A. He told me——

Q. (Interposing): Just a minute. [1047]

A. O.K.

Q. You said that you called him back and told him that steel billets—that the Foundry could not manufacture steel billets as per ASTM A-17/29; so, isn't it true, Mr. Clark, that Mr. Gips must have said: "Our order from New Zealand is for steel billets of ASTM A-17/29"?

A. According to my notes, which I have here, he asked for cast steel billets. Otherwise, I would not have written it.

Q. Now, that is something different—your notes. Didn't you, on your deposition in California, tell me, Mr. Clark, that you knew what the order was from New Zealand?

A. Knew what the order was? Nothing except what Mr. Gips told me.

Q. And didn't you say you knew it was for steel billets as per ASTM A-17/29 specifications?

A. That was the request by Mr. Gips, the information given by Mr. Gips, that they were to comply with A-17/29.

(Testimony of William Wallace Clark.)

Q. Yes; he told you and you knew, didn't you, Mr. Clark, that the New Zealand order was for steel billets for certain—750 of a certain dimension, and 50 of another dimension, as per ASTM [1048] A-17/29?

A. I knew it was for billets, yes, sir.

Q. He told you on the first day, did he not, that you talked to him, that the steel was ordered by the New Zealand Government Trade Commissioner, and that the order was for 750 billets 9½ inches by 4 inches by 4 feet, and Type A, Grade 2; and 50 billets, both of ASTM specifications?

A. Yes, sir.

Q. That is all he told you?

A. Yes, sir; just as I wrote it in my notes.

Q. Now, as I understand your further conversation with Mr. Gips, when you first heard of the order, that Mr. Gips told you he had from the New Zealand Trade Commissioner, I understand by your testimony that he also told you that the Foundry was going to manufacture these steel billets; is that correct?

A. That is correct.

Q. And now, as I understand, he having told you that the steel billets required to fill the order to the New Zealand Government Trade Commissioner required ASTM A-17/29; you then went to your specifications, and you had to go to the library; is that correct?

A. That is correct.

Q. And after reading and examining the specifications you determined, according to your testi-

(Testimony of William Wallace Clark.)

mony, for [1049] the first time that the steel billets as required would require forging and rolling?

A. That is the intent of the specification.

Q. And you called Mr. Gips, and you told him, as you have said upon your cross-examination already, that the Foundry cannot manufacture steel billets; that they can manufacture only cast steel billets, "and that is all we can inspect for." Is that——

A. (Interposing): That is correct.

Q. (Continuing): ——the substance of the talk?

A. That is the substance of the talk.

The Court: I think we will take a recess now.

Court will recess now for fifteen minutes.

(Whereupon, at 11:02 o'clock, a.m., a recess was had in the within-entitled and numbered cause until 11:22 o'clock, a.m., December 8, 1955, counsel heretofore noted being present, the following proceedings were had to wit:)

Mr. Morrow: May we have the last question and answer read back, your Honor?

The Court: The reporter will read the question and answer.

(Whereupon, the following was read [1050] by the reporter:)

"Q. And you called Mr. Gips, and you told him, as you have said upon your cross-examination already, that the Foundry cannot manufacture steel

(Testimony of William Wallace Clark.)

billets; that they can manufacture only cast steel billets, 'and that is all we can inspect for.' Is that the substance of the talk?

"A. That is the substance of the talk."

Q. (By Mr. Morrow): Mr. Clark, would you define for me the term "ingot" and terms "cast steel billet" and terms "steel billet"?

Do you want to take them one at a time?

First, ingot?

A. An ingot is a casting of steel, generally of considerable size.

Q. All right; what is a billet?

A. A billet is a smaller item of steel, and can either be rolled or forged or cast. It is generally—the general nomenclature is under a certain size.

Q. What is a cast steel billet?

A. A cast steel billet is the same as a rolled steel billet, except for the fact it hasn't been rolled or forged.

Q. Now, if you had an order for the manufacture— [1051] to inspect steel billets at Isaacson Iron Works, what would your inspection consist of?

A. It would consist of checking the analysis of each heat, the surface condition of the billets, to see that they were properly marked.

Q. Is that all?

A. After the billets are made that is all you can do.

The Court: Before you go on, I want to get the first part of the question.

(Testimony of William Wallace Clark.)

(Whereupon, the following was read by the reporter:)

“Q. Now, if you had an order for the manufacture—to inspect steel billets at Isaacson Iron Works, what would your inspection consist of?

“A. It would consist of checking the analysis of each heat, the surface condition of the billets, to see that they were properly marked.

“Q. Is that all?

“A. After the billets are made, that is all you can do.”

Q. (By Mr. Morrow): Now, if you had an order to inspect steel billets at Seattle Foundry, what would your inspection consist of? [1052]

A. Inspection at Seattle Foundry would be analysis, surface inspection, and the size, considering the fact that this order called for specific sizes.

Q. So that the order to your inspector, whether it would be either the inspection of material produced by the Foundry or by Isaacson's forging shop, would be practically the same, wouldn't it?

A. Practically the same, in view of the fact that when you are inspecting billets you assume that they have already been formed.

Q. Now, you have defined the terms “ingot,” and “cast steel billets,” and “billets”; would a layman, in your opinion, recognize the distinction in terms?

A. Assuming he knew nothing about steel?

Q. Yes.

(Testimony of William Wallace Clark.)

A. Assuming he knew nothing about steel, he would not know the difference.

Q. Now, when you had this telephone conversation with Mr. Gips—that is, the first one you state was on May 16th—did you ask Mr. Gips if he understood the difference in those terms that were being used?

A. I knew of no reason to do so.

Q. So that your answer is you didn't?

A. I did not.

Q. Did Mr. Gips ask you what the difference was? [1053]

A. He gave me no indication that there was any difference.

Q. Did he give you any indication that he knew anything about the steel business? A. No, sir.

Q. Was the fact disclosed to you that Grace and Company were exporters at that time by Mr. Gips?

A. It was not disclosed to me, but I have known W. R. Grace and Company for many years.

Q. You knew that? A. Yes.

Q. Did you know what the chief items were that Grace and Company dealt with during that period?

A. No, sir.

Q. Were you familiar with the fact that it was chiefly lumber? A. No sir.

Q. Now, would it have been important in this case, Mr. Clark, for you to have known that the end use of the steel billets required by New Zealand was for the manufacture of locomotive parts?

A. The end use is very seldom disclosed to us.

(Testimony of William Wallace Clark.)

Q. But that isn't the question.

Would it have been important in this case?

A. I do not see the importance. [1054]

Q. Well, didn't you tell me in San Francisco that if you had known that the end use was for locomotive—that the end use was for use of parts of locomotives, that you would have told Grace and Company to place the order some place else?

Mr. Gantt: Objection, your Honor, unless counsel cares to read from the deposition.

Mr. Morrow: I am asking if he didn't tell me that.

A. I told you something along that line. However, I have heard the deposition by New Zealand, and they used these steel billets for the purpose for which they were intended.

Mr. Morrow: I move that the voluntary remarks of the witness be stricken.

The Court: The last portion of the answer will be stricken.

Q. (By Mr. Morrow): Mr. Clark, I will ask you again, would it have been important in this case, and didn't you tell me that it was important in this case, to have known the end use of these billets? But that it was no concern of yours?

A. It was no concern to us what the end use was.

Q. But don't you agree that to have known the [1055] end use now that everything has been disclosed would have been the important factor in making the inspection?

Mr. Gantt: Objection, as calling for conjecture.

(Testimony of William Wallace Clark.)

The Court: I don't feel it is material.

Mr. Gantt: And immaterial.

The Court: Objection sustained.

Mr. Morrow: I think it is material, your Honor. This is a matter of cross-examination. It has already been stated by his expert, who thought it was important to know the end use.

The Court: The question as you framed it was as to the matter at the present.

Mr. Morrow: The objection is to the form of the question?

The Court: And to the substance after it was concluded.

Mr. Morrow: Yes; I see.

Q. (By Mr. Morrow, continuing): Mr. Clark, had you known that the end use of the steel billets required by New Zealand was for the manufacture of parts of locomotives, would it have made any difference in your accepting the Grace order?

Mr. Gantt: Objection as immaterial and [1056] irrelevant.

The Court: Objection overruled.

A. Will you specify what part of the locomotive it is to be used for?

Q. (By Mr. Morrow): Well, just answer the question. I can't specify.

A. I cannot answer the question, then.

Q. You mean that you would have to know the particular part? A. Certainly.

Q. Well, assume it was for a motion part.

(Testimony of William Wallace Clark.)

A. Assuming it was for a motion part, which is generally an alloy steel and a very good steel——

Q. (Interposing): Yes. Now, if you had known that New Zealand required it for such a use, would that have made any difference in accepting the Grace order?

A. We would have accepted the order to inspect after warning Grace and Company that they were getting cast steel billets. These billets could still have been forged down to a smaller part, and would have been exactly the same as had they furnished rolled or forged billets.

Q. Mr. Clark didn't you state in your [1057] deposition in San Francisco that if you had had the information that the steel billets were required for motion parts of locomotives, that you would have told Grace to place the order some place else?

Mr. Gantt: Objection, your Honor.

I think that if counsel is going to impeach the witness by deposition the witness should be shown the page of the deposition.

The Court: Do you wish to see the deposition?

The Witness: Yes, sir.

Mr. Morrow: May I have that question?

The Court: The reporter will read the question.

(Whereupon, the following was read by the reporter: "Q. Mr. Clark, didn't you state in your deposition in San Francisco that if you had had the information that the steel billets were required for motion parts of locomotives,

(Testimony of William Wallace Clark.)

that you would have told Grace to place the order some place else?")

The Court: Do you have a page number there, Mr. Morrow?

Mr. Morrow: I will give it in a minute, your Honor. [1058]

(Whereupon, there was a brief pause.)

The Witness: Page 49.

Q. (By Mr. Morrow): What page?

A. 49.

Q. Have you read your deposition recently, Mr. Clark? A. I have, sir, just now.

Q. Now, I will ask you if this was the question put to you and the answer given:

"Q. Well, if you had ever asked Mr. Gips what the billets were for, and he had told you that they were for parts of locomotives in New Zealand, would you have advised him that so-called cast billets would not be acceptable?

"A. Had he told me that the end use was for parts of locomotives, I would have told him to place the order some place where he could get rolled or forged billets."

A. That is what I testified.

Q. Now, can you answer this question, which I put to you before:

Is it important for an inspector to know the use to which the product is going to be put?

A. He very seldom knows the end use. [1059]

Q. Now, it would have been important in this case, would it not, Mr. Clark?

(Testimony of William Wallace Clark.)

A. That would have been up to Mr. Gips.

Q. Just a minute. Answer the question.

It would have been important in this case for the inspector to have known the end use of the steel billets for New Zealand?

A. I do not say that it was important for the inspector to know it.

Q. Now, I think you said in your direct examination, Mr. Clark, in reference to Defendant's Exhibit A-1, that those were your notes.

Do you have them before you?

A. The yellow sheets.

Q. You say you always make notes, don't you?

A. Yes, sir.

Q. And you always—and you said you put down what Mr. Gips told you in your notes?

A. Yes, sir.

Q. And did you put everything down?

A. I would not say that anything of any importance——

Q. You put down anything of any importance in your notes?

A. Important to us, yes, sir. [1060]

Q. Important to you? A. Yes, sir.

Q. Well, now, the fact that the order of Mr. Gips called for cast steel billets which were not rolled or forged would be a qualification to the specification, ASTM A-17/29 specification, would it not?

A. That is correct.

Q. And if Mr. Gips agreed to that, you would certainly have put that important matter in your

(Testimony of William Wallace Clark.)

notes, wouldn't you?      A. Not necessarily.

Q. Did he tell you that? Did you tell him that, I should say; and did he agree?

A. I told him that the cast steel billets would not conform to A-17/29 in its entirety, and that he was getting cast steel billets, and he agreed—that is, he had placed the order with Seattle Foundry. That is what he had an order for.

Q. Now, is there anything in your notes that sets forth that conversation with Mr. Gips on that occasion?

A. The only thing in my notes are the important facts pertaining to the order.

Q. And the part which you referred to is your description, is it, "200 tons cast steel billets approximately divided"? [1061]

A. No, the 200 tons approximately divided. The comma is in there.

Q. And what is there about these notes of yours which sets forth your conversation with Mr. Gips in respect to the qualification that the steel billets were not to be rolled or forged?

A. Nothing in that note except that they are cast steel billets.

Q. Now, you say that you made these notes on May 16, 1952?      A. Yes, sir.

Q. And how do you fix that date?

A. I fix that date from Mr. Robinson's date on his notes. I had not dated my sheet.

Q. You had taken your notes prior to Mr. Robinson's notes?      A. Yes, sir.

(Testimony of William Wallace Clark.)

Q. Now, how do you fix it as being the same date as Mr. Robinson's notes?

A. I had taken my notes in to Mr. Robinson to request him to write the order, and also on the next day, May 17th, I wrote a letter to our Seattle office, telling him to start the inspection.

Q. Well, now, Mr. Clark, I would like to have you explain this, if you can: [1062]

Mr. Gips wires his Seattle office on May 15th that the inspection was to be made by Pittsburgh Testing Laboratory.

In addition, he wrote a letter on May 15, 1952, advising that the inspection would be made by Pittsburgh Testing Laboratory.

Now, can you explain how he would have that understanding on May 15th, if he had not talked to you until May 16th?

A. I can make no explanation, and I do not have any sheet dated. I fix the dates only by circumstantial evidence with Mr. Robinson and my letter of May 17th.

Q. And I understand that that circumstantial evidence is that you handed your notes to Mr. Clark prior to the time of taking his notes on the 16th?

A. To Mr. Robinson.

Q. To Mr. Robinson—thank you for the correction.

A. I handed them to him immediately after writing them.

Q. Now, then, the only explanation there for such a situation of Grace entering into a contract

(Testimony of William Wallace Clark.)

with Foundry and having advised Pittsburgh would make the inspection in a wire letter on the 15th would be that [1063] you had taken your notes on the 15th or prior to the 15th—is that not correct?

A. It would seem so from his letter, but I fix the date as the 16th.

Q. But you concede you may have made these notes on the 15th; is that right?

A. I don't think so.

Q. At least, you concede they were prior to Mr. Robinson's notes?

A. They were prior to Mr. Robinson's notes.

Q. You stated that you called Mr. Johnson on the 17th to give him——

Mr. Gantt: Objection.

Mr. Savage: 16th.

Q. (By Mr. Morrow, continuing): Was it the 16th? A. I called Mr. Johnson——

Q. (Interposing): Oh, you wrote your instructions on the 17th. How do you fix the date you called Mr. Johnson on the 16th?

A. I fix the date immediately after having conferred with Mr. Robinson on my notes and called him immediately afterwards.

Q. As I get the sequence of events, then, whether your first call to Mr. Gips was the 15th or [1064] the 16th, that you took your notes first, that you went to Mr. Robinson and he wrote up his notes, and you told him what the order was, didn't you?

A. I gave him my notes.

(Testimony of William Wallace Clark.)

Q. And you talked it over with Mr. Robinson, and you called Mr. Johnson, is that the sequence?

A. That was the sequence.

Q. Now, did Mr. Robinson make up his notes from you personally? A. No, sir.

Q. I believe that he testified on examination by me that he wrote up his notes from what you told him.

A. I believe he testified he wrote up his notes from my notes and our conversation.

Q. And your conversation; but it was not done in your presence.

Now, I hand you what are Mr. Robinson's notes, No. 67, Plaintiff's Exhibit 67; have you seen this exhibit before, the notes? A. Yes, sir.

Q. When did you see it?

A. I have no memory.

Q. You have no memory?

A. When I saw it exactly I do not know.

Q. Well, your memory in respect to time [1065] isn't important, Mr. Clark, as to the specific dates; but do you recall whether you saw this during the period of time shortly after Mr. Robinson wrote the notes?

A. Shortly afterwards, yes, sir. I don't know the exact time.

Q. You cannot say the exact time. Was it one or two days? A. It could be.

Q. But your memory isn't very good when it goes back that far, is it?

A. Not too good after three years.

(Testimony of William Wallace Clark.)

Q. And Mr. Gips may have been telling the truth when that telephone call was between the 12th and the 15th; that is possible?

A. I only fix it by our notes.

Q. Now, Mr. Clark, in examining these notes which you state were written up from your order or your telephone notes and conversation with—which you had with Mr. Robinson, I don't see anything in there which would indicate to me that there was any qualification in the ASTM A-17/29 specifications; and I will ask you if you can point out to me or the Court where there is such a qualification to that specification?

A. There is no qualification in this—in these notes of Mr. Robinson's. [1066]

Q. Yes.

A. Which were written up for office work.

Q. Now, doesn't it follow, Mr. Clark, that with such an important qualification in the order of Grace and Company that that would have been a subject of notes both by you and Mr. Clark, in your notes and his notes?

A. There is qualification. I have written "cast steel billets."

Q. And that is all?           A. That is all.

Q. Very well. You have a formal work order, do you, Mr. Clark, which you send to your inspecting offices?           A. Yes, sir.

Q. Now, I take it that your testimony is that you turned the matter over to Mr. Robinson, and he processed the formalities that the Pittsburgh office

(Testimony of William Wallace Clark.)

requires in starting a job, and that part of that is the making of a formal inter-office work order. Am I correct in that?      A. That is the procedure.

Q. And I am handing you Defendant's Exhibit A-7, and ask if this is such a formal work order, and was the one prepared by Mr. Robinson on this occasion? [1067]

A. That is the—a formal order, our number S.F. 5799.

Q. You had nothing to do with that, had you?

A. I had a certain amount to do with it, yes. When any one of these orders are made up, if the office manager does not have sufficient information, she will inquire of me for the details.

Q. Did you on this occasion have any details which you supplied to the order?

A. No, except that I have got 800 billets, approximately 200 tons, marked cast steel, and the size of the billets, and so forth.

Q. Have you got the specifications listed?

A. The specifications are listed ASTM A-17/29.

Q. Yes. Now, Mr. Clark—thank you—did this formal order come over the desk, come over your desk before it went to Seattle?

A. That I would not remember.

Q. Well, now, if it had, and you had observed the specifications as listed in the formal order were for specification ASTM A-17/29, you would have made the proper qualification that the inspection was to be of cast steel billets, wouldn't you?

A. It says cast steel billets on it.

Q. But that is in respect to quantity, [1068]

(Testimony of William Wallace Clark.)

isn't it. Doesn't it say, "800 billets, 200 tons cast steel"? A. 200 tons is cast steel.

Q. Yes.

A. 800 billets; approximately 200 tons of cast steel.

Q. Is it your contention then that this part of the estimated quantity reading "800 billets, 200 tons cast steel" is a qualification and a deviation of that part which appears under the specification for ASTM A-17/29?

A. That is a work order between the offices and all details have been given to the Seattle office, both in my phone call of May 16th, and also my letter of May 17th.

I don't see that it is necessary to put it in the work order between the offices.

Q. I see. So that it isn't in there, is it?

A. No, sir.

Q. Now, I understand that you didn't consider that important because you called Mr. Johnson and you told him on the phone on the 16th that there was this qualification? A. I did.

Q. Now, these conversations between you [1069] and Mr. Gips: Will you state what period of time they were?

You have stated.

Mr. Morrow: Strike my question, please.

Q. (By Mr. Morrow, continuing): You have indicated, Mr. Clark, that your conversations with Mr. Gips pertaining to his request for an inspection, and your acceptance of the order, was on May 16th?

(Testimony of William Wallace Clark.)

A. To the best of my knowledge.

Q. Now, was there any conversation subsequent to that time in reference to the terms of the agreement between yourself and Mr. Gips in respect to this work order?

A. There was no further conversation with Mr. Gips that I remember.

Q. In respect to those particular things?

A. To those particular items. That had been agreed upon at our first conversation.

Q. Had all of your conversations in respect to Mr. Gips' request for an inspection, and your quoting him rates and your—and his authorizing the inspection taken place prior to May 21, 1952?

A. That had taken place prior to May 21st.

Q. Now, no subject of your conversation with Mr. Gips, Mr. Clark, was that Mr. Gips' order should [1070] be confirmed in writing, was it?

A. I don't remember that I requested him to confirm it in writing.

Q. Well, I notice this is the situation in respect to Mr. Robinson's notes:

Now, you gave him your notes and you told him about Mr. Gips' order and the information contained in Plaintiff's Exhibit 67, is, "Gips will give us letter."

Now, I will refer that part to you—"Gips will give us letter." A. Yes?

Q. Was that the information you got from Mr. Gips?

(Testimony of William Wallace Clark.)

A. It may have been; I do not so remember.

Q. Well, I believe you told me that in San Francisco, but you don't recall now, do you?

A. I do not recall.

Q. By the way, did Mr. Gips confirm the order via letter?      A. We received a letter from him.

Q. Did he confirm his order by letter?

A. If you can call it that, yes, sir.

Mr. Morrow: Yes. May I have Plaintiff's Exhibit 21?

(Whereupon, document was handed to [1071] counsel by the Clerk.)

Q. (By Mr. Morrow): Referring you to Plaintiff's Exhibit 21, being a letter of May 20, 1952, is that what you understand to be Mr. Gips' confirmation of the order of Grace and Company to Pittsburgh?

Mr. Gantt: Objection, your Honor, to the use of the word "confirmation." It is a legal conclusion.

The Court: The reporter will read the question.

(Whereupon, the following was read by the reporter: "Q. Referring you to Plaintiff's Exhibit 21, being a letter of May 20, 1952, is that what you understand to be Mr. Gips' confirmation of the order of Grace and Company to Pittsburgh?")

Mr. Gantt: And, in addition, the letter speaks for itself.

The Court: Well, there has been some testimony here regarding confirmation in writing.

(Testimony of William Wallace Clark.)

If the witness says he has no present recollection, and Mr. Gips says here it is confirmed, it seems to me it is a rather tenuous situation on which you are basing your question.

Mr. Morrow: I meant to bring that out, [1072] and I will attempt to do so, if your Honor please.

Q. (By Mr. Morrow, continuing): Referring you to Plaintiff's Exhibit 57, and this statement, "Gips will give us letter," does that refresh your recollection, Mr. Clark, that either you requested Mr. Gips to give you a letter confirming your conversations and the Grace order, or that either one of you suggested it?

A. I may have. I don't have any present recollection of it. It is more or less procedure.

Q. Yes. Now, had Mr. Robinson talked to Mr. Gips prior to Mr. Robinson's making his notes?

A. Not that I know of.

Q. You gave him all the information which he put down in his notes?

A. I gave him the information in my notes.

Q. So that you gave him the information that Gips would send a letter?

A. If that is the recollection. I don't know that I told him that.

Q. Is that the letter?

A. This is the letter, but this is a conversation——

Q. (Interposing): Just a minute. You have answered the question. That is the letter. [1073]

Now, then, did that letter come over your desk?

(Testimony of William Wallace Clark.)

A. Yes, sir.

Q. When did it come over your desk?

A. May 21st.

Q. Did you reply to that letter?

A. No, sir.

Q. Did Mr. Robinson reply to the letter?

A. I believe he sent out the usual form of acknowledgment of receipt of a letter.

Q. Well——

Mr. Morrow: Plaintiff's Exhibit 22?

(Whereupon, document was handed to counsel by the Clerk.)

Q. (By Mr. Morrow, continuing): Showing you Plaintiff's Exhibit 22, is that Mr. Robinson's letter acknowledging Mr. Gips' letter?

A. That is.

Q. And did that come over your desk approximately the time it went out?

A. Not necessarily.

Q. How long afterwards?

A. Probably after the claim started.

Q. Yes. Now, I think you were going to [1074] say, Mr. Clark, that that letter of Mr. Gips of May 20th didn't do something.

Now, what didn't it do? I may have misunderstood. I cut you off.

A. I know you did.

Q. Now, what were you going to say?

A. I was going to say that this confirmed the conversation between Mr. Robinson and Mr. Gips.

(Testimony of William Wallace Clark.)

Q. Yes. Well, does it? Was that what you were going to say?

A. That is what I was going to say.

Q. Now, you understand there was a conversation between Mr. Gips and Mr. Robinson?

A. This letter says so. I don't know what the conversation was.

Q. Now, does that letter include your understanding with Mr. Gips pursuant to the details of your employment by Grace?

A. I would state——

Mr. Gantt (Interposing): Objection, your Honor. The letter speaks for itself.

A. (Continuing: ——the letter was written to Pittsburgh Testing Laboratory on the first conversation between Mr. Gips and Mr. Robinson.

The Court: The question is: Does that [1075] letter which you are referring to now—is that Exhibit 21?

The Witness: Yes.

Mr. Morrow: May we have the question and answer read back, your Honor?

The Court: The reporter will read the question and answer.

(Whereupon, the following was read by the reporter:)

“Q. Now, does that letter include your understanding with Mr. Gips pursuant to the details of your employment by Grace?

“A. I would state the letter was written to

(Testimony of William Wallace Clark.)

Pittsburgh Testing Laboratory on the first conversation between Mr. Gips and Mr. Robinson.”

The Court: What is your objection, Mr. Gantt?

Mr. Gantt: That the letter speaks for itself.

The Court: He is asking whether it states his understanding.

It isn't asking him what the letter states itself. You take it that there can be no question about the letter or the statement in the letter, I mean?

Mr. Gantt: No, your Honor, but the letter, whatever the words are, written there, it is in the letter. [1076]

The Court: Of course, I recognize that if it is a contract the language is controlling, but I don't believe the Court should prevent a witness from stating his understanding for whatever purpose it may serve.

I will overrule the objection.

Q. (By Mr. Morrow): Have you the question in mind, Mr. Clark?      A. Repeat it, please.

Mr. Morrow: Yes.

The Court: The reporter will read the question.

(Whereupon, the following was read by the reporter: “Q. Now, does that letter include your understanding with Mr. Gips pursuant to the details of your employment by Grace?”)

A. This letter does not go into the details of the agreement between Mr. Gips and myself in regard to the inspection. It is just a general letter.

Q. (By Mr. Morrow): Thank you. Mr. Clark, I

(Testimony of William Wallace Clark.)

believe you said that about 10 days or two weeks after your first conversation with Mr. Gips you heard from him again, and was there a discussion at that time about the method by which Seattle Foundry intended to manufacture [1077] these cast steel billets?

A. I don't remember any conversation about Seattle Foundry's method.

Q. I see.

Mr. Morrow: May I have 24, please?

(Whereupon, document was handed to counsel by the Clerk.) [1078]

\* \* \*

(Whereupon, the following was read by the reporter:)

“Q. Mr. Gips has indicated in his testimony that at about May 20, 1952, he received a letter from his Seattle office which enclosed this letter of May 16, 1952, from Seattle Foundry, and you have testified that that letter did not—that you hadn't seen it before until at least after the claim arose.

“Now, what I would like to know, Mr. Clark—would you like to read it? You can read it, sir.”

Q. (By Mr. Morrow, continuing): Whether the contents of Mr. Schlaugh's letter and Mr. Murphy's letter was a subject of discussion between yourself and Mr. Gips?

A. Not that I remember.

Q. You did remember, however, that you had an inquiry from Mr. Gips concerning what the taper—

(Testimony of William Wallace Clark.)

what taper would be allowed in drawing the pattern out of the sand?

A. Mr. Gips called me and wanted to [1079] know what taper—how much taper is allowed in drawing the pattern out of the sand.

Q. Yes. Now, the exhibit—this Plaintiff's Exhibit 24, inquiry from the Seattle office, was answered by Mr. Gips on May 22, 1952, in which he advised——

Mr. Morrow: May I have 25?

The Court: Exhibit 25?

Mr. Morrow: I think I would like to finish, if I might.

(Whereupon, document was handed to counsel by the Clerk.)

Q. (By Mr. Morrow, continuing): ——advised the taper that would be permitted to draw the product out of the sand.

Now, what I want to ask you is:

Is it possible, Mr. Clark, that your conversation took place between the time of Mr. Gips' inquiry, which you received on May 20, 1952, and the time that you replied to his office on May 22, 1952?

A. It probably did.

Q. So that you may have been mistaken when you said that the subject of this conversation [1080] occurred ten days or two weeks after?

A. I said I did not remember. It might have been ten days or two weeks. [1081]

(Testimony of William Wallace Clark.)

The Court: You may proceed, Mr. Morrow.

Q. (By Mr. Morrow): Mr. Clark, you have testified that after your conversation with Mr. Gips on or about May 16, 1952, that there was some question raised by him with respect to taper and chipping? A. Yes.

Q. That is correct, isn't it? A. Yes, sir.

Q. Between the time of the conversation on May 16th, and the time the New Zealand claim arose in 1953, that is, prior to the New Zealand claim, where were the conversations with Mr. Clark in reference to technical matters involving the method of production of the cast steel billets?

(Whereupon, there was a brief pause.)

Mr. Morrow: Will you strike that question, and let me rephrase it.

Q. (By Mr. Morrow, continuing): You have testified in respect to your conversations on May 16th and I have no reference to those now. I am talking about subsequent conversations that you had with Mr. Gips, in which you have mentioned that questions were raised with respect [1082] to chipping and tapering.

In connection with all those subsequent conversations which occurred prior to the time of the New Zealand claim, the question is whether or not all of those conversations related to the method of manufacture of the product at Seattle Foundry?

A. That would include method of manufacture and also what limitation or what limits were to be

(Testimony of William Wallace Clark.)

used in chipping the billets for further forging or rolling.

Q. That was the information—

A. (Interposing): Information; and there was one other one on chemical analysis.

Q. Now, I hand you Plaintiff's Exhibit 47, which is a letter of May 22, 1953, from Mr. Gips to Pittsburgh Testing Laboratory, attention Mr. Robinson.

Did this letter come to your attention?

A. Yes, sir. It is my signature.

Q. You have an initial there? A. Yes.

Q. And attached to that is the letter of May 15, 1953, from New Zealand Trade Commissioner to W. R. Grace, setting forth their claim, or complaint? A. Yes, sir.

Q. And that likewise came to your [1083] attention? A. Yes, it came to my attention.

Q. And now, referring you to Plaintiff's Exhibit 47, being a letter of June 4, 1953, from Mr. Gips to Pittsburgh Testing Laboratory, did that letter and those enclosures come to your attention?

The Court: Didn't you just inquire about number 47?

Mr. Morrow: The other was 46.

The Court: 46; all right.

Mr. Morrow: I am sorry. I may have misspoken myself. The first one was 46.

Q. (By Mr. Morrow, continuing): Is that your initial? A. That is my initial.

Q. So that in respect to both 46 and 47, they came to your attention about that time; is that cor-

(Testimony of William Wallace Clark.)

rect?      A. About that time, yes, sir.

Q. Now, my questions are directed to this period in May and June, 1953. That is after the New Zealand claim arose, Mr. Clark.

Did you see Mr. Gips during that period of time?

A. Mr. Gips came over to our place, and he had a conference with Mr. Robinson with regard to the claim. [1084]

Q. And did you talk to him, or see him?

A. That is out of my jurisdiction, on claims.

Q. Well, the answer is that you didn't see or talk to Mr. Gips?

A. I may have talked to him, but as far as discussing the claim, that is out of my jurisdiction.

Q. Is that when you met him for the first time?

A. That was the first time that I had met Mr. Gips.

Q. Now, naturally the subject under discussion at that time was the New Zealand claim, was it not, Mr. Clark?      A. It would be.

Q. And did you have discussion with Mr. Robinson concerning the New Zealand claim at that time?

A. Necessarily.

Q. You reviewed the New Zealand claim, did you, at that time?      A. Yes.

Q. And did you consult your ASTM A-17/29 specifications?      A. Yes, sir.

Q. Was there a steel shortage during that period of time, or shortly before, Mr. Clark? [1085]

A. You mean 1952 or 1953?

Q. 1952 and 1953.

(Testimony of William Wallace Clark.)

A. In 1952 there was definitely a steel shortage. It had eased up considerably in 1953.

Q. Was there a steel shortage at the time you received your order from Mr. Gips?

A. That I don't remember.

Q. There could have been?

A. There could have been.

Q. Now, your experience had been, had it not, Mr. Clark, that during the steel shortage cast steel billets which had not been subsequently rolled or forged were accepted by purchasers in lieu of the rolled or forged billets?

A. Yes, in certain cases. [1086]

\* \* \*

“Q. So far as the order of New Zealand was concerned, that inasmuch as the product was to be produced at the Foundry, it had to be assumed that the product desired by New Zealand was cast steel billets?”

A. I don't remember telling him that. [1087]

Q. That was——

A. (Interposing): That he had ordered cast steel billets in the first place; I wouldn't assume.

Q. Now, in your discussion with Mr. Robinson after the claim arose, did you tell Mr. Robinson that it was common during a serious steel shortage to accept cast billets which would otherwise conform to ASTM specifications?

Mr. Gantt: Same objection, your Honor.

The Court: I don't see how what he told Mr.

(Testimony of William Wallace Clark.)

Robinson would be material. You haven't a letter signed by Mr. Clark, have you?

Mr. Morrow: No, your Honor, but I can ask first a preliminary matter if Mr. Clark assisted in replying to Grace and Company in connection with this New Zealand claim.

Q. (By Mr. Morrow, continuing): Would you answer that, Mr. Clark?

A. I do not know that I assisted in performing—in conforming that letter, but Mr. Robinson and I probably talked it over.

Q. That is right; and you probably told Mr. Robinson at that time, didn't you, that by strict interpretation of the ASTM specification A-17/29, that [1088] cast billets without subsequent rolling or forging would not comply?

Mr. Gantt: Objected to as immaterial and irrelevant.

The Court: I will sustain the objection unless there is some other showing made.

Mr. Morrow: Pardon me?

The Court: Unless there is some other showing on materiality.

Mr. Morrow: I understand.

Q. (By Mr. Morrow): Isn't that the time you and Mr. Robinson went into the question of specifications to determine in what respects the claim of the New Zealand Government would be valid or invalid?

Mr. Gantt: Objected to as immaterial and irrelevant.

(Testimony of William Wallace Clark.)

Mr. Morrow: Well, I am trying to develop something, your Honor.

The Court: If it is preliminary, I will overrule the objection.

Mr. Morrow: May the reporter read the question?

The Court: The reporter will read the question. [1089]

(Whereupon, the following was read by the reporter: "Q. Isn't that the time that you and Mr. Robinson went into the question of specifications to determine in what respects the claim of the New Zealand Government would be valid or invalid?")

The Court: You are referring now to a conversation he said he probably had?

Mr. Morrow: Yes. I am referring to their consideration of the New Zealand claim, which Grace had asked them to consider, and to give them a reply on.

A. We may have talked it over to that extent, but there was no question in our minds but what the New Zealand Government got what they had ordered.

When we received this claim, it was our first knowledge that there was any difference.

Q. (By Mr. Morrow): And you were the one—you were the technical steel man in Pittsburgh at that time, weren't you? A. Yes.

(Testimony of William Wallace Clark.)

Q. And didn't Mr. Robinson consult you for technical knowledge concerning the New Zealand claim?

A. That was not a technical job. It was more of a legal job than technical. [1090]

Q. But the question is, didn't Mr. Robinson consult you?

A. He probably talked to me, yes, sir.

Q. Concerning the technical matter which arose in connection with the New Zealand claim?

A. He wouldn't ask me the legal end; that is his part of the business.

Q. And at that time didn't you furnish to Mr. Robinson this explanation, or the explanation as contained in Plaintiff's Exhibit 19, which is the reply of Pittsburgh Testing Laboratory to Plaintiff's Exhibits 46 and 47? [1091]

\* \* \*

Mr. Gantt: I will make the same objection, your Honor, that this is beyond the scope of direct examination, completely and wholly outside the direct examination.

The Court: Well, of course, some things may be outside the scope. I will permit the answer, subject to a motion to strike.

Q. (By Mr. Morrow, continuing): You did furnish the information, didn't you, Mr. Clark?

A. I will not say I furnished all the information. We may have discussed it one way or the other, but I don't remember having furnished Mr.

(Testimony of William Wallace Clark.)

Robinson any information that he would not know himself.

Q. Now, Mr. Clark, you have stated that the subject of whether the billets should be rolled or forged was a subject of your discussion of May 16, 1952, and is it possible that your discussions that the billets should be rolled or forged first came up in conversations [1093] between you and Mr. Robinson, or you and Mr. Gips, after receipt of the New Zealand claim?

A. From your question do I infer that the billets were to be subsequently rolled and forged?

Mr. Morrow: May the reporter read the question?

The Court: The reporter will read the question.

(Whereupon, the following was read by the reporter: "Q. Now, Mr. Clark, you have stated that the subject of whether the billets should be rolled or forged was a subject of your discussion of May 16, 1952, and is it possible that your discussions that the billets should be rolled or forged first came up in conversations between you and Mr. Robinson, or you and Mr. Gips, after receipt of the New Zealand Claim?")

A. (Continuing): There was no such idea in mind after the claim, because we knew that they were receiving cast steel billets in the first place, and that was what was ordered.

Q. In your discussion with Mr. Robinson and perhaps with Mr. Gips in May and June, 1953, you

(Testimony of William Wallace Clark.)

had under consideration whether the billets required by [1094] New Zealand were required to be rolled or forged; did you not?

A. That they intended them to be rolled or forged?

Q. Yes.

A. After we got their claim we knew they had intended them to be rolled or forged.

Q. Yes. Now, isn't it true, Mr. Clark, that for the first time in this case you made a critical examination of ASTM A-17/29 and discovered that the billets required by New Zealand were a semi-finished steel product requiring rolling and/or forging?

A. I made a critical examination on May 16, 1952.

Q. That isn't the question. Didn't you make a critical examination in May and June, 1953?

A. I would read the thing over just the same way. I wouldn't call it "critical."

Q. And wasn't it in May, 1953, or June, 1953, that you determined for the first time that by interpretation of the ASTM A-17/29 specifications, that sand cast billets without subsequent rolling or forging would not comply?

A. When I first received the order from Mr. Gips—— [1095]

Mr. Morrow (Interposing): Pardon me for interrupting. May the witness have the question back? I didn't mean to interrupt you, Mr. Clark, but the way you started out, I don't think you were going

(Testimony of William Wallace Clark.)

to answer the question. I am sorry, sir, Mr. Clark.

The Witness: That is all right.

Mr. Morrow: May the question be read?

The Court: The reporter will read the question.

(Whereupon, the following was read by the reporter: "Q. And wasn't it in May, 1953, or June, 1953, that you determined for the first time that by interpretation of the ASTM A-17/29 specifications, that sand cast billets without subsequent rolling or forging would not comply?"")

A. (Continuing): That was not the first time. The first time I determined that was in my first conversation with Mr. Gips.

Q. (By Mr. Morrow): Very well. However, you did advise Mr. Robinson, didn't you, that in respect to this particular order, inasmuch as it had been placed with the Foundry, it had to be assumed that cast billets that conformed to the specifications as to size, surface conditions, and [1096] chemical analysis were acceptable?

Mr. Gantt: Objection. He already answered that question once or twice. Repetition.

Mr. Morrow: The purpose of this——

The Court (Interposing): I will overrule the objection.

Mr. Morrow: May the reporter read the question?

The Court: The reporter will read the question.

(Testimony of William Wallace Clark.)

(Whereupon, the following was read by the reporter: "Q. Very well. However, you did advise Mr. Robinson, didn't you, that in respect to this particular order, inasmuch as it had been placed with the Foundry, it had to be assumed that cast billets that conformed to the specifications as to size, surface conditions, and chemical analysis were acceptable?")

A. I wouldn't advise him exactly that. I would advise him I had told Mr. Gips that the only instance—that the only paragraphs—inspection we could make was for chemical, surface conditions, and size.

Q. (By Mr. Morrow): Well, let me ask [1097] you:

Is this information—information which you furnished Mr. Robinson—contained in Plaintiff's Exhibit 49:

"In this particular case since the order had been placed with a foundry which had no facilities for rolling or forging it had to be assumed that cast steel billets conforming to specifications as to size, surface conditions and chemical analysis were acceptable."

A. Acceptable to A-17, with the modification as outlined in my original talk.

Mr. Morrow: Would you read the question back?

Mr. Clark, if you will, just listen to the first part of the question, sir. I think you will understand it.

(Testimony of William Wallace Clark.)

(Whereupon, the following was read by the reporter:) “Q. Well, let me ask you: Is this information—information which you furnished Mr. Robinson—contained in Plaintiff’s Exhibit 49:

“ ‘In this particular case since the order had been placed with a foundry which had no facilities for rolling or forging it had to [1098] be assumed that cast steel billets conforming to specifications as to size, surface conditions and chemical analysis were acceptable’?”

Mr. Gantt: I believe the witness already answered that, your Honor.

Q. (By Mr. Morrow): Can you answer that, Mr. Clark?

The Court: If he has, he may answer it again.

A. It wasn’t the case of assumption. It was a fact that they had ordered that, and that is what they got.

Q. (By Mr. Morrow): I am sorry I have not made it clear.

A. You made it clear, but——

Q. (Interposing): The question is: Was this information that you furnished Mr. Robinson?

A. I don’t remember furnishing that information. We have talked it over, I will grant you that; but what I furnished him, I do not remember.

Q. Now——

Mr. Gantt (Interposing): I object, your Honor, to this whole line of questioning, on the ground the

(Testimony of William Wallace Clark.)

witness said he didn't remember this, and I [1099] object, irrelevant and immaterial, matter occurring after the claim, in some conversation which the witness says he does not recall having with Mr. Clark, and I move the whole line of questions and answers be stricken.

The Court: The motion may show, and the motion will be denied.

You may proceed.

Q. (By Mr. Morrow, continuing): Mr. Clark, I gathered you may have furnished Mr. Robinson that particular information, but you don't recall it.

Now, can you state what time you furnished information to Mr. Robinson concerning this matter under discussion?

Was it back on May 16, 1952, or was it in May, 1953?

A. I gave Mr. Robinson my notes on May 16, 1952, and talked over the order with him.

Q. Yes; and you said that you made complete notes of important matters at that time, didn't you?

A. Which I considered important, yes.

Q. Well, now, so, therefore, May I conclude that inasmuch as you didn't include this information, and I am referring to the following:

"By strict interpretation of ASTM [1100] specification A-17/29 cast billets without subsequent rolling or forging would not comply. However, for the past several years during which a serious steel shortage has existed, it has been quite common to accept cast billets which otherwise conformed to

(Testimony of William Wallace Clark.)

the specification. In this particular case since the order had been placed with a foundry which had no facilities for rolling or forging, it had to be assumed that cast billets conforming to specifications as to size, surface condition and chemical analysis were acceptable.”

Now, my question is this:

Inasmuch as that information was not contained in your original notes of May 16, 1952, isn't it fair to assume that this was the information which you developed in May, 1953, when the New Zealand claim arose?

A. I do not see the connection.

Mr. Morrow: That is all.

Mr. Gantt: Just a couple of questions, [1101]  
Mr. Clark.

Redirect Examination

By Mr. Gantt:

Q. What makes a steel billet a billet of forging quality, or a forging quality billet?

A. Chemical analysis only.

Q. Did you hear Mr. Murphy's—Mr. Murphy testify as to how the procedures and practices and manner in which these particular cast billets in this case were manufactured by the Foundry?

A. I did.

Q. Speak up a little louder, please.

A. I did.

Q. Will you state whether the castings which

(Testimony of William Wallace Clark.)

Mr. Murphy has described as having made were of forging quality?

A. They were forging quality.

Q. Was that based upon your years of experience in the iron and steel business?

A. Yes, sir.

Q. What qualifications or training does an inspector who works in your company require?

A. The qualifications of the inspectors required in our company—they are qualified to inspect as per instructions for defects or for variations with original instructions. [1102]

Q. Do they have to be engineers, metallurgists or chemists?

A. No, we get the most of them from industry.

Q. Do they even have to be college graduates?

A. No, sir.

Q. Do you give them a course of training?

A. We give them a course of training in their duties.

Q. Then they don't have to be experts in each field?      A. No.

Q. Let me show you, Mr. Clark, Exhibit——

Mr. Morrow (Interposing): Objected to as improper redirect.

The Court: I don't know what the question is.

Mr. Gantt: I was trying to get the number of the exhibit.

Q. (By Mr. Gantt, continuing): For illustrative purposes, only, Mr. Clark, I would like to show you Plaintiff's Exhibit 69, and ask if you will state,

(Testimony of William Wallace Clark.)

looking at page 138 in the book, "The Making and Shaping of Steel," by United States Steel Company, and look at this picture in the center of the page, being 138 and 139, and tell me [1103] what is that item sitting on the rolls there?

Mr. Morrow: Objected to as improper redirect. It wasn't gone into on cross.

The Court: It may be, although if counsel wishes to reopen for that purpose, I will permit it.

Mr. Morrow: I really have no objection.

Mr. Gantt: I would just like to have the witness look at the picture and tell us if he knows what that item is on the rolls there.

A. It is definitely a wide flange beam.

Q. (By Mr. Gantt): Is it a steel billet?

A. No.

Q. Will you turn for a moment to page 130?

The Court: What was the first page?

Mr. Gantt: The first page was 138 and page 139. It is a picture which appears in the center of the two pages, which was previously testified to by Mr. Hargos as being a billet.

Q. (By Mr. Gantt, continuing): Will you examine pages 130 and 131 of Exhibit 69, and look at the picture on the left-hand side of the page, which is page 130, and tell us what is depicted there?

A. That is an ingot coming out of the [1104] soaking pit.

Q. An ingot?           A. Yes.

Q. Can you estimate the size of it with respect

(Testimony of William Wallace Clark.)

to the man pictured there, and the other items there with which you are familiar?

A. If it is completely out and in comparison with the man I would say possibly twenty tons.

Q. Twenty tons. Now, how much of a job would it be to crop or discard or cross-section that ingot?

A. It would be more than the steel was worth.

Q. Was it very difficult?

A. A very difficult job.

Q. And take considerable time? A. Yes.

Q. Now, in your cross-examination Mr. Morrow made reference to a question and answer appearing on page 49 of your deposition. He asked you if you made answer—if you were asked the question appearing on line 29.

Mr. Gantt: May we have the deposition, your Honor?

(Whereupon, document was handed to counsel by the Clerk.) [1105]

Q. (By Mr. Gantt, continuing): You were asked by Mr. Morrow on cross-examination, and will you turn to page 49 of your deposition taken in San Francisco, August 12, 1954, and I believe that Mr. Morrow on cross-examination asked you the question beginning on line 20, and you stated that you answered—you were asked that question, and you gave the answer which appears on that page; is that correct? A. I gave it.

Q. Now, I will ask you, sir, if you were asked the question appearing on line 16, or line 11:

(Testimony of William Wallace Clark.)

“Were you the one who made the assumption that cast billets would be acceptable under those circumstances?”

Were you asked that question?

Mr. Morrow: Objection. Now, I don't think this is proper, your Honor. This has nothing to do with the question involved.

Mr. Gantt: The question was gone into. Are you finished, counsel? [1106]

\* \* \*

The Court: It may have some bearing. I think this whole question and answer may be brought out, yes; anything related to the question asked.

Mr. Gantt: I believe that it is related, your Honor.

Q. (By Mr. Gantt, continuing): All right. I will ask you to examine page 49 of your deposition, at line 11, and will ask you if you were asked, in your deposition, the question beginning:

“Were you the one who made the assumption that cast billets would be acceptable under those circumstances?”

Were you asked that question? A. Yes, sir.

Q. And did you give the answer on line 13, page 49:

“No, sir. I told Mr. Gips that they could [1107] not make them, so that the only thing we could inspect would be chemical, size and surface defects.”

Did you make that answer?

A. I made that answer.

(Testimony of William Wallace Clark.)

Q. Were you asked the following question, line 16:

“Did you ask him what the steel billets were for?”

Were you asked that question on your deposition?

A. I answered:

“No, sir, it wasn’t my business.”

Q. And does that appear in your deposition?

A. Yes, sir.

Mr. Gantt: That is all the redirect examination.

### Recross-Examination

By Mr. Morrow:

Q. Well, did you make the following answers to the following questions:

“That isn’t your business?”

Answer: “No, that is the customer’s.”

A. That is written here, yes, sir.

Q. And, on the next page, weren’t the [1108] following questions and answers put to you at that time—to make the examination complete:

“Q. Yes. Now, in the inspection business, Mr. Clark, is it important for an inspector to know, who is inspecting steel and certifying them to conform to ASTM specifications, to know what use is going to be made of the steel in order that he may make a proper inspection?

“A. Yes, but it would be 20 per cent of the time that we know what the end use is.”

A. That is correct; that is what I said.

(Testimony of William Wallace Clark.)

Q. Mr. Clark, you testified, I think, on redirect here, that in your opinion the billets supplied by the Foundry were in conformance with the specifications you had.

My only question is: You made no examination personally of the billets, did you?

A. Of the billets?

Q. Yes.

A. I was in San Francisco, and the billets were in Seattle.

Q. You can't say whether they complied or didn't comply?

A. No, as far as surface and chemical—that is all. [1109]

As far as I know, nothing except from the reports.

Q. All you saw was the chemical analysis?

A. All I saw was the chemical analysis.

Mr. Morrow: That is all.

Mr. Savage: Seattle Foundry has no further questions.

The Court: That is all, Mr. Clark.

Mr. Gantt: May he be excused, your Honor?

Mr. Morrow: Yes.

Mr. Savage: As far as we are concerned.

Mr. Morrow: Thank you, Mr. Clark.

The Court: You may be excused, Mr. Clark. You are excused from attendance under subpoena as far as this case is concerned. He may remain or go back to San Francisco, as he chooses. [1110]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT  
COURT, TO RECORD ON APPEAL

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 10 of the United States Court of Appeals for the Ninth Circuit and Rule 75(o) FRCP and designation of counsel, I am transmitting herewith the following original papers in the file dealing with the action as the record on appeal to the United States Court of Appeals at San Francisco, said papers being identified as follows:

1. Complaint, filed June 8, 1954.
14. Answer of Pittsburgh Testing Laboratory, filed Aug. 2, 1954.
108. Pretrial order, filed Nov. 29, 1955.
116. Memorandum decision, filed May 17, 1956.
117. Plaintiff's Motion for Rehearing and Clarification of Memorandum decision, filed Aug. 31, 1956.
120. Order Denying Plaintiff's Motion for Rehearing and Clarification of Memorandum Decision, filed Sept. 17, 1956.
121. Findings of Fact and Conclusions of Law, filed Sept. 21, 1956.
122. Judgment, filed Sept. 21, 1956.

124. Notice of Appeal, filed Oct. 18, 1956.

125. Cost Bond on Appeal, filed Oct. 18, 1956.

126. Order Extending Time for Filing Record and Docketing Appeal, filed Nov. 17, 1956.

127. Statement of Points Upon Which Appellant Will Rely, filed 12-31-56.

128. Designation of Contents of Record on Appeal, filed 12-31-56.

129a, b, c, d, e. Five Volumes of Court Reporter's Transcript of Trial Proceedings, filed Dec. 31, 1956.

130. Order Transmitting Original Exhibits, filed Dec. 31, 1956.

131. Volume 6 of Court Reporter's Transcript of Trial Proceedings, filed Jan. 2, 1957.

132. Volume 7 of Court Reporter's Transcript of Trial Proceedings, filed Jan. 4, 1957.

Plaintiff's Exhibits 1 to 25, inclusive; 26 to 50, inclusive; 51 to 71, inclusive.

Defendant's Exhibits A-1 to A-25, inclusive; A-26 to A-28, inclusive; A-29 (same as Plaintiff's Exhibit 54); A-30 (same as Plaintiff's Exhibit 55); A-31 to A-34, inclusive, and Defendants' Exhibit B-1.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of appellant for preparation of the record on appeal in

this cause, to wit: Filing fee, notice of appeal, \$5.00; and that said amount has been paid to me on behalf of the appellant.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle this 4th day of January, 1957.

[Seal]                      MILLARD P. THOMAS,  
Clerk;

By /s/ TRUMAN EGGER,  
Chief Deputy.

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[Endorsed]: No. 15408. United States Court of Appeals for the Ninth Circuit. Grace & Co. (Pacific Coast), Appellant, vs. Pittsburgh Testing Laboratory, a Corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed January 11, 1957.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.